The Province of Alberta

IN THE MATTER OF THE PUBLIC INQUIRIES ACT

—and—

IN THE MATTER OF a Commission, dated the 12th day of October, A.D. 1938, to inquire into matters connected with Petroleum and Petroleum Products

Commissioners:

The Honourable MR. JUSTICE McGILLIVRAY
(*Chairman*)

—and—

L. R. LIPSETT, ESQ.

Session:

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FINAL ARGUMENT

10:00 A. M. Session.
7th December, 1939.

THE CHAIRMAN: Yes, Mr. Ray.

MR. RAY: When the Commission rose last evening I was discussing the performance of the competitive system and particularly the earnings derived from that operation and I had pointed out that there were three major earners from the industry and several of less incidental importance, the investors, the wage earners or employees and the Government, the Government earnings being derived primarily from taxes imposed.

Now we were discussing the question of the revenue derived in the Province of Alberta from the industry's operations here and if you refer to pages 10,242 and 10,243 of the transcript you will find that we submit these facts----

MR. FRAWLEY: Have you the volume?

MR. RAY: I do not have the volume but it ought to be, I will get that----

MR. FRAWLEY: If you will tell me the page I will give you the volume, what is the page?

MR. RAY: 10,242 and 3.

MR. FRAWLEY: It will be in volume 90, Mr. Chairman.

MR. RAY: Now this is what appears on the pages:

Texas Canada is advised that the total revenue received by the Alberta Provincial Government in 1938 from all sources was twenty-four million;

of this amount taxes collected from all sources amounted to a little more than eight and a half million; taxes therefore accounted for 36% of the total revenue; other sources of revenue to make up the total revenue received were licenses, about 9%, Dominion Subsidies, fees, fines and penalties, liquor profits and the like.

Texas Canada is also advised that the following, among other items, were involved in total revenue:
Corporation Taxes in excess of a million dollars; Railway Taxes, approximately a half a million dollars; Amusement Taxes, 150 thousand dollars; these are round figures; Pari Mutuals, 26 thousand dollars; Income Taxes 1.190 thousand dollars.

Royalties from Turner Valley production and other production in Southern Alberta, 329 thousand; Petroleum lease rentals and fees, 459 thousand; or from producing operations approximately three-quarters of a million.

The gasoline and fuel tax for the year 1938, the calendar year, yielded almost 3 million dollars; automobile licenses, including pleasure cars, trucks, drivers' licenses and chauffeur licenses yielded almost 2 million.

It is to be noted from this that the Province derived from oil royalties and lease rentals, gasoline and fuel tax and automobile licenses a total of four and a half million or more than one-half

of its total tax revenue, directly from the operations of the industry.

Mr. Macleod tells me that a good portion of the license revenue comes from the petroleum industry likewise.

Now if you will refer to Exhibit "644", "Petroleum Facts and Figures" published by the American Petroleum Institute at pages 117 and following.

THE CHAIRMAN: What Exhibit number. Would you give me that again please.

MR. RAY: Exhibit "644", page 117 and following, you will get the story of taxes imposed upon the industry in the United States and of the information contained in that volume I want to direct your attention particularly to the statistical data which appears at page 128.

The upshot of that data is that in the United States one-fourth of all State tax receipts came from gasoline taxes, gasoline taxes alone, in the United States.

I am going to return to the subject of taxation in a few moments but I want to finish my summation in respect to the earnings, sir, and it is perfectly obvious that the Government is the biggest earner, by far the biggest earner, from petroleum operations.

No implication is intended

that Company earnings have been maintained in fair weather and foul. The petroleum industry, like every other industry, has been affected by economic dislocations. For example, it was shaken to its very foundations by the world-wide depression inaugurated in 1929 and by the overproduction in the great East Texas field and elsewhere in 1930-1935 compelled by the rules of law then in force. However, even during that discouraging period, Texas, while it was compelled to reduce wages, later restored and thereafter increased, and dividends to some extent, nevertheless maintained wages at levels relatively higher than in other industries and an unbroken dividend record. In every year since the organization of its predecessor company in 1901 to the present day, Texas has paid dividends. As a consequence of this record, Texas has never had difficulty in getting capital for its business purposes.

Now to summarize the performance of factors as they apply to the industry;

First: we find that the industry has found and is and has produced and is manufacturing petroleum and petroleum products necessary to meet a rapidly increasing demand.

Second: the competitive system, particularly in the petroleum industry, has effected a constant downward trend in the prices of petroleum products.

Third: Gasoline price indices have compared favorably with the indices of the cost of living and the items involved therein.

Fourth: Consumption has been expanded. More and more people have been able to utilize petroleum products in constantly increasing amounts.

Fifth: Techniques have been constantly improved and are continuing in that direction. Products have been improved in quality and performance.

Sixth: The mass techniques have been adopted wherever possible.

Seventh: Waste, through improved technology and co-ordination and integration of operation, has been greatly lessened.

Eighth: While taxes have constantly increased, the trend of the jurisdictional costs have been downward.

Ninth The earnings of the industry have been modest and in fact have been far less than the taxes imposed upon the industrial operations. Earnings, however, have been sufficient so far to attract capital when needed.

Tenth: It is common knowledge that the wages paid by the petroleum industry are among the highest paid by any industry in North America. Furthermore, as wages have increased, hours of labor

have decreased. Nevertheless, in recent years, payrolls have been much less than total taxes.

Eleventh: The industry has faithfully served its customers by making available to them improved products at decreased prices. It would have done better in this regard had not government interfered by imposing drastic taxes.

Twelfth: Governments, because of constantly increasing taxes, have been the chief beneficiaries from the operation of the industry. In fact, taxes have been substantially too high. Because of excessive taxes, the industry has been unable to sell its products at prices sufficiently low to make the products available to the poorest of the people, although its market is composed largely of low-income consumers.

Thirteenth: This performance has been accomplished without government subsidy in any form. By combining this performance with some of the other facts above recited, the results below stated are obtained.

Now I said in commencing my argument that we would engage a bit in a mathematical process and I have been trying to put before you certain facts more or less isolated in character but now I think we can start to do a little adding and show briefly precisely what this overall picture is and it comes to this.

Significant price facts are these:

First: The pressures created by competition in the past have caused and now cause (a) constantly decreasing prices for (b) constantly improving products (c) at lower unit prices and (d) the creation and maintenance of a market composed largely of low-income consumers.

Second: The creation of a market composed largely of low-income consumers has created in turn a pressure on prices to keep them as low as possible and has rendered the marketers of the petroleum products impotent to arbitrarily fix and thereafter maintain high, arbitrary and unreasonable prices, all factors considered.

(Page 16,083 follows)

Third, the level of prices is, in fact, made by the lowest priced seller of importance in the market.

In view of the manner in which prices are made, profitableness in the industry has resulted and now results from the ability of the members of the industry, by cost reduction, to sell their products at the prices thus made at a moderate profit.

Members of the industry have been able to reduce costs by:

1. A continuous program of inproved technology which among other things has led to constant improvement in the quality of goods sold in the market and the development of new products of increasing utility.

2. The development and adoption of the mass techniques - mass production and mass distribution to meet mass demand.

3. Integration of functions - finding and production of raw material, manufacturing of refined products, transportation of both raw material and refined products, and marketing - where necessary with all of the benefits arising from coordination of operation.

The general result of this kind of price performance has been that integrated, semi-integrated and non-integrated operators live side by side, each enjoying the benefits of this performance, and "scratching to do better.

The industry's accomplishments have not been at the expense of the investor, as he has received a fair return on his investment, at the expense of the employee as he is the highest paid wage earner in industry, at the expense of the consumer, as he buys petroleum products

at a price relatively cheaper than any other commodity or material, nor at the expense of the public, because the public has not been required to subsidize the industry's operations, rather has the industry subsidized government for the benefit of the whole people.

I should like to turn for a moment our attention to the reasonableness of existing prices. Again I want to bring to your attention, at the expense of, perhaps, too much repitition, the importance of this performance in this story.

Through its operations, the industry in the past has found the essential raw materials to manufacture a supply of refined products to satisfy an ever increasing demand. It has adopted distribution methods which have anabled it conveniently to reach the consumer and which have permitted the consumer conveniently to obtain wanted commodities. It has engaged in a constant attack upon the problems with which it has been confronted with the result that waste has been lessened, costs and prices have been lowered, and moderate, capital-attracting earnings have been maintained. Its price making has not been arbitrary. Its price levels have resulted from economic forces operating continuously in and among the markets in which petroleum products have been sold. Historically and economically, then, the industry's price performance, both in relation to the increasing number of people who have been rendered able by that price performance to use petroleum products, and in relation to the prices of necessities of life, has been good.

But what of present prices? Are factors involved in the price structure, as presently constituted, which could be disregarded or eliminated with a

consequent reduction of price? The primary purposes of the industry, as has been plainly demonstrated by its historical performance, have been and are (1) to enable as many people as possible to buy petroleum products, (2) to maintain fair and reasonable wages to the employees, (3) to return a moderate profit to the investors, and (4) to contribute a fair share to the maintenance of government. Prices which have permitted this have been reasonable.

If we approach the question fr the point of view of the person who is unable to buy gasoline what is the result? He is unable to buy because prices are higher than he can afford. He may think that prices are unreasonable and that prices should be established at a level which would make it possible for him to own an automobile and to buy the petroleum products necessary to operate it. But to do this would require that the investors who invest their capital in the industry, the employees who contribute their skill to its operation, the governments that obtain revenue through taxation, should forego their profits, a part of their wages and their taxes, respectively. It might even require that the industry operate at constant and continuing losses. The ultimate of such a program would be universal bankruptcy. The industry would disappear. There would be no petroleum products available for anybody.

In one direction, and only one should there be any cut. Taxes are too high.

What about reasonableness from the government point of view? Government should entertain the same purposes as industry. If these be the purposes of government, the historical and economic performance of the industry, as already demonstrated, meets an accusation of

unreasonableness of prices with an array of facts that refutes it in all particulars save one. While gasoline is and has been one of the cheapest commodities available to the people of North America, its price is substantially higher than it would be if government did not exact from the motorist an excessive share of taxes.

The standard of living of a nation depends upon the buying power of the people constituting the population. Individual buying power is dependent first upon income received by the individual and secondly upon the prices he must pay for the things he must buy. The petroleum industry has been able to contribute to an increased standard of living in North America by (1) enabling the individuals interested in it (the investors and the employees) to receive sufficient income to enable them to buy the things they need and to live decently and in self-respect; and (2) so performing its functions as to enable more and more people of moderate income to buy its constantly improved products at constantly decreasing prices.

This has not always been an easy task: its tax liabilities have constantly increased.

The imposition of constantly increasing taxes upon practically all phases of the industry's operations requires a consideration of two gasoline prices, (1) the gasoline price including taxes, and (2) the gasoline price excluding taxes.

THE CHAIRMAN: Mr. Ray, it seems a convenient point to interrupt you and to ask, assuming that we accepted your view for the purposes of recommendation, the view that taxes are too high; assuming also that the amount of revenue sought by the Government is not more than is required to

perform the functions of Government; have you any suggestion to make as to what other form of taxation or means of revenue should be put forward to take the place of any reduction recommended by us?

MR. RAY: Your question asks me to be a little bit inconsistent with my thesis. As I opened this discussion I stated that I thought one of the primary purposes of an Investigation of this kind was to isolate fact from opinion. Now, I am not armed with the facts concerning your Alberta activities. I tried my best to get at it. It has been a very difficult task. You see what a tremendous thing it is. I think people in Government-----

THE CHAIRMAN: Just assume with me, Mr. Ray, for the moment, and for the purposes of our discussion only, that they are not seeking one dollar more than they need. One of the sources of revenue is taxation on this industry.

MR. RAY: That is right.

THE CHAIRMAN: I say if we accept the view which you put forward that the taxation on this industry is such, or its consumers, it matters not, it is the industry and its consumers that are meeting it, and we also assume it is too high. Then we, perhaps - I do not know that it is our duty but it is something to consider - should say "Now, you need that money it is true but do not take it out of this industry. Here is a sensible way to get it." Have you any suggestion?

MR. RAY: I am going to give an opinion and I want you to know that it is an opinion. It is not based upon actual knowledge of your Government operations here. It seems to me in taxation you have one fundamental

principle, that all people should contribute to the maintenance of government. That, it seems to me, is obvious. Another fundamental principle, it seems to me, is that the tax payers should, while all contribute, contribute according to their capacity to pay. Now, we get into the intricacies of lack of facts. But it has been suggested and I think it is a fairly sound suggestion that instead of picking out one industry here and imposing a terrifically large sales tax upon its operation and taxing it in all other directions to boot, that we might reduce that one specific tax by making that kind of tax applicable to the sale of all goods. That is one way. Now, there may be complications in that kind of a programme. There is another thing, I think, has been discussed pro and con in this continent for many years and that is the widening of the income tax base. That is another way. How much you can extract from the people in the lower bracket, additional tax, is always a very ticklish question and is something that usually our representatives in government do not like to consider. We have had that kind of a debate going on in the United States for a number of years. I personally believe that everybody, everybody should share the responsibility of government, and as a consequence that everybody should share in raising revenue; and it also has a general benefit. When only a minority of our people are taxed that minority seldom ever has a voice that is strong enough to cause governments to retrench when retrenchment is necessary, because the great majority are not taxed at all. That is one of our difficulties in the United States, I think. Only a limited few are contributing to the tax revenue and, as a consequence, when they howl about it we hear politicians saying "well-----

MR. FRAWLEY: Economic royalists, they call them.

MR. RAY: "If you do go on and shout you are the people who are doing the paying. But we are not going to pass part of your obligation along to those other people we have tried to exempt." It is a tremendously big question.

THE CHAIRMAN: I think it is.

MR. RAY: It seems to me that this situation is so definitely unfair, just singling out a group of people who themselves have no more capacity to pay than a great many of the other people who are exempt. It is a tremendous tax.

THE CHAIRMAN: You say it is a sales tax imposed upon people, the majority of whom are in the low bracket scale?

MR. RAY: The great majority of whom do not have enough income even to be required to file income tax returns in this Province. Now, those are the facts, and they are irrefutable facts.

THE CHAIRMAN: How has your general sales tax worked out in your country?

MR. RAY: In places where it has been applied it has usually been applied in emergencies to raise money, and quite a lot of money. Of course, you have an extremely difficult situation in a general tax of that kind, because there are so many people who are tax collecting agencies and the government has not got enough tax collecting agencies, that you do find a certain amount of evasion.

But one of the difficult problems in the United States, I do not know whether it has gotten here, when the gasoline taxes began to get so high, so that there began to be an evasion, the petroleum industry had to organize itself on a rather wide spread basis in the United States to stop that sort of thing or you can see what it would do to the economics. Here is a fellow who is paying a 5¢ a gallon tax. They should be remitting that but they will not, I am not going to pay it, and he couldn't pay it and he cut his prices and wrecked the whole price structure until no doubt,- but we brought that to an end pretty much I think. I think with experience the general sales tax will work out.

THE CHAIRMAN: Are they in California now?

MR. RAY: They are in lots of places. We have a general sales tax in New York which was imposed for the raising of an emergency fund to take care of the unemployment situation. There are lots of them in the United States. I do not know where, but as you ride through the country on the train why you will find that the food you buy in the diner is taxed in a great many States. They have that kind of tax in Missouri and in quite a number of States.

MAJOR LIPSETT: May not this tax on gasoline, Mr. Ray, be a method of broadening the basis of taxation in as much as it is paid by the people in the lower income tax bracket.

MR. RAY: It is a method of broadening

the basis.

MAJOR LIPSETT: Yes.

MR. RAY: Undoubtedly it broadens the basis to the extent that they are motorists.

THE CHAIRMAN: If they are in the low bracket income class, are you not taxing them already.

MR. RAY: They all ought to be. You have one automobile for each eight people in this Province. Now I do not know how that applies to families but let us assume there are five people in each family, then right away you have three people who are escaping any of these broad taxes, and on the assumption that you have five people in each family and I do not think that that is true, I doubt if it is.----

THE CHAIRMAN: You say one out of eight people in Alberta own an automobile.

MR. RAY: It is in the record.

THE CHAIRMAN: Where is it.

MR. RAY: There is a chart, an Exhibit, Mr. Chairman.

THE CHAIRMAN: Do not let me interrupt you now.

MR. RAY: I can find it.

THE CHAIRMAN: Mr. Macleod can no doubt give us the reference later, Mr. Ray.

MR. RAY: It is under "Growth", if you will take this brief, it is in the footnote.

THE CHAIRMAN: What is it, one to five, in

the United States.

MR. RAY: Yes, one to five. One to nine in Canada and one to eight in this Province.

MR. RAY: That information appears, Mr. Chairman and Mr. Commissioner at pages 9931 and 9935 of the transcript and in Exhibit----

MR. FRAWLEY: That is Volume 87, Mr. Chairman.

THE CHAIRMAN: 9935.

MR. RAY: That is correct and the graph in Exhibits "334", "335" and "336".

MR. FRAWLEY: Yes.

THE CHAIRMAN: Thank you.

MAJOR LIPSETT: Would not that criticism of the gasoline tax, Mr. Ray, would that not apply equally to a tax levied on tobacco or on liquor or on any other individual commodity.

MR. RAY: I think it would if they are singled out for special attention and for more special attention than it seems wise to impose. You see we do not contend and I never will contend, that gasoline should be entirely free from taxation. I do not think it should. I think that it should bear a proportionate share but when you----

MAJOR LIPSETT: As a commodity it should bear its share.

MR. RAY: It should bear a share, yes, I think it should. I think it should. It has proved to be a very effective tax but when you get a tax imposed that

is in excess of 100% of its refinery value why you have to say it is completely out of proportion, providing you can raise the revenue otherwise and in a fairer way.

MAJOR LIPSETT: Your criticism really is as to the quantum of the tax, not as to the principle of taxing.

MR. RAY: The principle of singling out a single industry I think is unsound providing you can get the revenue by a generally applied tax that applies to all.

THE CHAIRMAN: What the Commissioner is putting to you, there should be taxes against this and that and the other thing, I mean a general sales tax.

MR. RAY: I think one general sales tax providing the factual situation is such that all products can bear it.

Now I am having a little difficulty with that because I do not know what the situation is here; wherever a general sales tax has been applied in the United States it has been in addition to this special tax, not in lieu of it. If it had been in lieu of it there would have been a great deal more sense to it but there is no sense at all in having a tremendously high special sales tax and then adding a general sales tax on top of that. That still maintains this proportionate share of taxation.

MR. FRAWLEY: Is there any special sales

tax in the State of New York and then a State of New York gasoline tax.

MR. RAY: That is right, but in many cases they do make exceptions.

Now I would like to continue this analysis a little further, of the price including taxes.

The industry does not contend that it should not make any contribution to government operation through taxation. It does contend that it has been compelled to share too large a proportion of the tax burden. The tax factor is by far the largest factor in the price structure, exceeding any other factor by a substantial margin. Of the total weighted average price of 27½ cents per gallon in Calgary for 1938 the government extracted in taxes 8.76 cents. The Dominion and Provincial governments received from Texas Canada's operations approximately 5½ cents more per gallon than was received by the carrier transporting the material from Sunburst to Calgary and approximately 4½ cents more per gallon than the dealers gross operating margin. They received over 4½ cents more than Texas Canada's total jurisdictional costs, over ten times as much as Texas Canada's total selling and overhead expenses and almost thirty-five times as much as Texas Canada's advertising expense. And what did Texas Canada receive? It suffered a loss in excess of a cent a gallon.

It is inconceivable that

a government exacting in revenue such a large share of the price per gallon for gasoline could for a moment contend that prices had reached an unreasonable height through the industry's fault.

Viewing the matter in another way - in respect to the profits allowed to the various parties at interest - it seems that the governments are by far the greatest beneficiaries from industrial operations, "earning" at least 6¢ per imperial gallon on each imperial gallon of gasoline sold by Texas Canada from its Calgary plant.

Now that is a very modest estimate, that 6¢, on the assumption that it costs them a cent to function. I doubt that, to administer the tax law, I doubt that because the companies are acting as the tax collecting agency.

The Government of Alberta has not employed the revenue received by it from the petroleum industry, over 1/2 of all tax revenue, for the direct benefit of the industry. Gasoline taxes have not been used for the improvement of roads, but were used for general government expenses.

In view of this record, it is clear that the over-all price, including taxes, is unreasonably high because taxes makes it so.

Now let us turn our attention to the price, excluding taxes.

The price excluding taxes, that is the industry's price, is unreasonable only if

waste exists in the use of the industry's facilities and man power. So far as Texas Canada is concerned, the only economies that could be effected would be by reduction of its jurisdictional costs, the weighted average of which for the year 1938 in Calgary totaled a little more than 4¢ per gallon. These costs included Texas Canada's expenses for selling and overhead, advertising, bulk station operations, earnings adjustments, and handling losses. I think it will be admitted that the items constituting handling losses, earnings adjustments, and advertising may be disregarded in the present discussion, as the total of these three items is so insignificant as to be of no consequence. If, therefore, any waste exists in the use of excess facilities or man power, it should be reflected in bulk station expenses amounting to 2.9¢ and in selling and overhead expenses amounting to .87¢, totalling 3.77¢ per Imperial gallon. It seems obvious that any reduction in these costs of a cent a gallon would exaggerate the possibilities, but for our present purposes we shall assume that it is possible. We shall return to this assumption in a moment, but let us first consider whether or not there is an excess of facilities.

Implicit in the specific question as to whether the marketing facilities used by the industry are necessary is the contention that prices are made unreasonably high by their use. Because of the emphasis placed upon this contention, we shall discuss it in detail.

So far as we have been able to ascertain, nobody has ever endeavored to estimate the exact number of classes of operators, of persons or of facilities and plants required for the distribution of petroleum products under presently existing conditions - or any other conditions, for that matter. Consequently we are forced to speculate.

In considering necessity of facilities for the purpose of supplying Alberta with petroleum products, it may be asserted that one large tank farm for the storage and dispensation of petroleum products at Calgary would be quite enough. However, if this method of distribution were followed, then all the people of the Province who want petroleum products would have to go to the market - the one large tank farm - to obtain them.

If consumers had to suffer, such inconvenience to obtain gasoline and petroleum products, there is no question that many would do without them. Further, many would have to consume as much product getting to and from the market as they could buy after they got there. Obviously this would result in many doing without. The demand would fall and savings to be effected by large volume movements of commodities would be lost. It goes without argument that under such circumstances price would have to rise. The elimination of mass distribution would work in precisely the opposite direction than the employment of mass distribution methods now involves.

It may also be argued that there could be several such establishments spread throughout the Province and that such a distribution program would result in savings by eliminating alleged excessive plants and facilities. But, if there were several such establishments as I have above described, it would be necessary that the stations be located at points where buyers of the commodities could obtain them conveniently and easily.

Is there any method whereby the Government could determine with exactitude where such stations should be located? Is there any method by which the Government or marketers themselves could determine precisely in advance how many of them there should be? Is not it possible that here might be about as many as at present?

Even governments find it necessary to cater to the wants and demands of the public, as for example in the Postal Service. The Postal Service I think is one of the best examples of mass distribution methods.

Mass distribution facilities for the distribution of petroleum products have been established in response to a speedy increase in demand or if established prior to the existence of a demand in a particular locality they have been able to continue in existence only as demand was built. Lack of demand to support all facilities at going prices

naturally will result in elimination of some of them. It has in the past. Improved technology and the necessity for cost reduction in the "down-price" market contribute also. Facilities, therefore, are kept pretty near the minimum required to meet the demand arising from the wants of the people. When the Government considers the problem of distribution, it should not make the mistake of assuming that either the types of concerns engaged in distribution or the number of persons engaged in distribution or the number of facilities used in distribution is too great, unless the Government is prepared to run the risk of increased prices which may result from the elimination or curtailment of mass demand, mass distribution or mass production.

As Texas Canada views the matter, its facilities are not excessive. All are required. Furthermore, a legitimate doubt exists as to whether there are any facilities, plants and the like now in use in Alberta which are excessive under presently existing conditions. Each plant and each facility that actually responds to a demand for either products or services is a plant or facility which should, in fact, be continued until the demand for its services or the products sold has lessened to a sufficient degree not to warrant the further use of that plant or facility.

Many plants are fully depreciated and, as a consequence, the cost of operating them is very low.

Under the competitive system,

plants and facilities are abandoned when the demand upon them diminishes to a point where their continued maintenance is continuously unprofitable.

Of course, it may be and has often been argued that a hundred service stations advantageously placed could perform the same distribution service as five hundred placed without regard to over-all market requirements, but before I should agree to such a statement, I should like to know first what result the elimination of the four hundred stations would have on mass production, on competition generally, and on mass distribution to meet mass demand - that is to say, what the increased inconvenience to the public would produce in the way of increasing all costs, as well as decreasing them. It might very well be, and it is certainly conceivable it would be, that the demand would be lessened to an extent which would create economic dislocations not speculatively subject to ready evaulation.

The Province of Alberta is growing; the demand for petroleum products is increasing; more and more people are using the transportation afforded by automotive equipment, and the public demands convenience in the obtaining of its supplies. All these factors enter into the demand picture and affect the whole economy under which the petroleum business is conducted.

Then I for one, am not prepared to state that there are either too few or too many stations. I can state that, if there are too many, the

surplus will in due course be eliminated through the operation of natural as opposed to artificial restraints.

And I do not think you should take my submissions alone, if you will recall the testimony of Dr. Frey you will remember that he told you he had been studying that question for a number of years and with the help of a great many people in the Petroleum Administrative Board and they never found the answer and that they finally came to the conclusion that the existing number must be the proper number.

THE CHAIRMAN: Well hardly that but that it would right itself.

MR. RAY: It rights itself. It is an administrative situation which you have to take into account. It is a big problem. It is a big troublesome problem but I do not believe that anyone is capable of determining in advance just how many there should be.

I was told the other day, I do not know how true this is but it is very interesting if true, that when the Nazi Government in Germany decided that everything should be efficient to the last degree and they were building these great highways through the country, that they placed the service stations as exact spots, that they thought they should be able to supply the demand for motor products in that country, a demand much smaller than the demand here, and they found to their amazement that people did not buy gasoline by the block or they did not buy it by the mile, they bought it when they needed it and when they wanted it and if a

service station was not there they had to wait and as a consequence some of those stations were very successful and others were no good at all. They did hardly any business and accordingly that was an effort, if true, on the part of that country to find, to try out an exactitude in advance determination of necessary facilities.

What I have already said likewise applies to the next question - namely, is the number of persons, firms or corporations engaged in any branch or state of marketing and distribution excessive and/or unnecessary for efficient marketing?

It of course will be admitted readily that one company can move a large volume of goods with fewer employes than another company might use. It does not follow from this comparison that any of the latter's employes are unnecessary. They may or may not be. If all the persons engaged are in fact required by the marketer in question to maintain his volume of sales, they are, of course, necessary. If by releasing a single one of that whole number, the marketing volume would be decreased in even a slight degree, a necessary element to proper distribution has been disposed of.

It may be that many marketers could maintain the volume of business they now do or even increase that volume with fewer persons engaged in the marketing process. So far as Texas Canada is concerned, it does not think it could do so. In any event, the question is reduced to a matter of opinion. The

marketer is in the best position to judge for himself. Furthermore, we must not forget that, under the competitive system, all competitive factors are at play in forcing each competitor to the lowest possible price level and, consequently, the lowest possible cost level consistent with the reasonable return on the investment.

It is, therefore, a fairly safe conclusion that, if excessive numbers are engaged in the industry in Alberta, the excess will, in due course, be eliminated by the natural play of economic forces.

Our discussion to this point has been materialistic and has not taken into account any of the social questions involved. Let us assume, for the sake of argument, that there is a surplus of types of distributors, of the number of persons engaged in the business and also in the facilities employed. Let us assume, further, that such a premise would lead to the conclusion that distribution, all things considered, is not as efficient as it could be because a fewer number could and would perform precisely the same service that the greater number now perform; that, in consequence, costs are a bit higher than they would be if the surplus could be eliminated. But this is to approach the matter from only one point of view.

To eliminate the surplus and to keep it eliminated through government control, it must be admitted, would deprive a great many people of their present means of livelihood and those who could

not readily be absorbed in other employment would become charges of the state. Do we not have at the present time enough of that? What, may we ask, is the difference between relief by taxation and relief by addition to price? If we endeavored to answer this question we might and probably would find that relief by taxation is the more expensive of the two.

Furthermore, may we ask what the social consequences are of an economy which deprives a citizen of the right to sell gasoline if he wishes? What Solomon will the people of Alberta select who will determine that John Jones should have the right to engage in the marketing and distribution of petroleum products and that Henry Smith should not?

We naturally wonder if the people of Alberta have arrived at a state of mind where they are willing to surrender the freedom of action now enjoyed in exchange for what may or may not result in a slightly less price for a single or a few commodities.

These questions also imply that elimination of possible services might reduce distributor and dealer margins. Could the distributors and dealers, even though there were less of them perform the functions of their occupations, pay decent wages to their employes and maintain an adequate standard of living for themselves as well on less? Frankly, we do not know. Perhaps they could. Perhaps they could not. The pertinent question is this: If they could do as well on less under the changed circumstances, how much less? It

is safe to say it would not be as much less, as many who substitute wishful thinking for actual results have often indicated.

Under such a democratic government, where every man is free to choose his occupation, and to invest his savings in a garage, or a service station if he chooses, and is at liberty to risk and lose it, there may be some overlapping of business locations and services. It cannot be expected nor desired that each shall be fully occupied twenty-four hours a day before another is established. Such an economy would not be democratic but dictatorial. It would very greatly change the lives of men.

Labor has been employed, purchasing power provided and distributed in building the service stations and garages, in cutting the lumber, making the cement, providing transportation, and in every process from the raw materials to the finished building. Hundreds of people are employed now in operating them, securing therefrom a livelihood. Either a curtailment of present stations or an arbitrary curtailment of future building will take from many respectable people a source of their living, reduce their living standards, and, in many instances, add to the relief rolls to be a burden on all the employed.

We submit that neither the cost of present outlets nor the cost of operation has added, or does add, a single penny to the selling price of

gasoline. In fact, as is elsewhere herein explained, cost alone does not make the selling price.

Were Texas Canada to build a million dollar service station in Calgary, it would have to sell its gasoline at the same price others ask and get for similar grades, or do without business. Perhaps, even at the same price, Texas Canada would be unable to get sufficient business to make a profit, but Texas Canada would either have to face the music, take its loss, or find other sources of profit to carry on. It might even lower the price to get volume and publicity, but certainly would do little business if it raised it.

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In a very large majority of the service stations, garages, grocery stores and other places where gasoline is sold in Alberta, gasoline is only one of many items carried. In many instances, it is the least important item. This being so, but a small portion of the cost of space, labor, etc., is chargeable against gasoline; yet its elimination would very greatly affect other departments and cut down the profits of the business, curtail purchasing power and living standards.

Today's greatest problem is to find ways and means of increasing employment rather than curtailing it.

If there were enough unneeded, superfluous and burdensome facilities in the Province to add one cent per gallon (our assumed one cent) to the price of gasoline, the elimination of the surplus would mean a saving to the motorists of Alberta of about $3.95 each.

For this pittance, the people would sacrifice freedom for dictation. Is it worth it?

What we need today is more freedom, not less; more opportunities, not less; more cooperation and understanding, and less, much less, dictation.

It is doubtful if the people of Alberta desire to sell a birthright for a mess of pottage.

Is the "ex-tax" price too high? It is a natural price resulting from competitive pressure and economic forces. It does not include in its structure any wastes not better eliminated by competition than by dictation. Under existing conditions it cannot be maintained at a high, arbitrary level. Obviously, if past experience be any criterion, the petroleum industry, when lower prices

are possible, will quote them.

Now I should like to direct my attention to the question of Government Operation, Control and Regulation of Business. What we have already said disposes of the question of whether the Provincial Government should either take over and operate or otherwise control the petroleum industry in Alberta. However, our story would not be complete should we fail to bring to the attention of the Commission the experience - largely an experience of failure - that unwise governmental regulation has written across the pages of history.

In order that there will be no misunderstanding whatever about the matter, Texas Canada wishes to state its position. It favors unqualifiedly any measure which in fact will improve the social and economic order. It is unalterably opposed to any suggestion which past experience has proved beyond peradventure of doubt is unsound, retrogressive and impractical. Government operation and control of business are all three. The type of government regulation which establishes appropriate rules of competition and causes government to act as a referee in the enforcement of those rules is sound and desirable. Texas Canada's study of past experience has convinced it that if the Provincial Government should take over and operate the petroleum industry in Alberta, its operations would end in tragic failure. It is Texas Canada's opinion that the competitive system of free enterprise, once the appropriate rules of competition have been established, is a far superior method for progressive improvement than government control could possibly be.

Those who advocate government

operation and control of business indulge the superstition that government regulators are both omnipotent and omniscient, as, in fact, if success be the reward, they would have to be.

Of course, we know that there are no omniscient and omnipotent men. Who, then, are the regulators?

The "regulators" - the government-employed business managers - are in fact mere men.

If they are experienced, they are the men who now privately run things. If they are inexperienced, they must learn all about the business involved. In any event, they must use precisely the same knowledge, precisely the same methods, and bring into operation precisely the same improvements currently available to managers of private enterprise.

They differ from private managers in only two particulars:

(1) They are backed by the power of government, such as it is. As we shall presently demonstrate, government lacks the ability to arbitrarily control economic laws.

(2) They can cover their losses by withdrawals from the public treasury, the apparently unlimited revenue obtained by taxation.

The various methods of government activity that have been previously attempted have been (1) government operation, (2) government monopoly, (3) cartelization, (4) production control, (5) anti-trust regulation, and (6) price fixing, both direct and indirect.

I am going to add another. I did not contemplate discussing the National Industrial Recovery Act here because I thought it impolitic in view of

the fact that several things that were done under that Act are still in the Courts. The petroleum industry is still involved to some extent but I think there are some things in view of your interest in this question of an intervening Board that I should point out to you, some of the mistakes that were made in connection with that experiment.

There are some fields in which government can and traditionally has in the past functioned. The municipal governments almost everywhere are engaged in the business of operating water supply and sanitary projects. National governments carry the mails. These projects are not always failures. They sometimes are operated to pay their way. However, in the great majority of instances even these functions are unprofitable and in fact are subsidized by general taxation.

Several specific instances of government operation of non-governmental business enterprises were recited in the testimony. Every instance that we could find resulted in failure, widespread subsidization by general taxation, and in many instances in ultimate abandonment.

In respect to Government Monopoly, many specific examples were recited in the testimony covering a period from the sixteenth and seventeenth centuries to the present day. These efforts likewise have been failures. A comprehensive study of modern government monopolies led to this conclusion:

" The experience with public monopolies, which were "thought to be suitable instruments for stabilizing "prices or production, has been most disappointing for "the governments and the people. They are expensive "for the consumer; they are exceedingly bureaucratic "and they have to widen their scope and extend their

"interferences far beyond the field originally assigned "to them. Their history shows fewer interesting "features to the economist than their wide range might "make one expect. They will always occupy, however, "a prominent place in that great field of measures "which might appropriately be called the 'pathology of "economic policy'. Harsh as this opinion may seem, "it is sufficiently supported by facts and analysis."

Specific examples of failure of cartelization were brought to the attention of the Commission, Cartelization in Germany and the copper cartel were two of these.

The petroleum industry has had the experience with this type of "planned economy." In many foreign countries it has had to operate under cartels.

It still goes on in some countries in which the Texas Company subsidiaries operate.

As a consequence of the fact that we were operating in the United States and Canada under a system of free enterprise and in these other countries under a cartelized control, I asked our people in charge of our operations what they thought of the two systems. I asked them for an absolutely honest opinion. I said "Now let us do not paint the lily. I want you to tell me what you think of these two systems when you see them side by side and day by day?" And this is what I got.

Those who, like Texas Canada and Texas (Delaware), operate in Canada and the United States under a competitive system of free enterprise and in some other countries under a scheme of cartelization,

invariably favor the former because (1) it permits of better price performance from the consumer point of view, (2) it gives play to initiative, (3) it prevents freezing of business and the closing of the doors to newcomers, and (4) it functions automatically, permitting inexorable economic laws their full play, while cartelization frustrates or endeavors without success to frustrate the working of these laws while at the same time suppressing the progress arising from initiative and competitive pressure.

On the other hand, cartelization artificially maintains the weaker, less efficient, undesirable elements of the industry in a position which is unjustified economically or otherwise. It leads to artificial restraints and to ultimate collapse.

The experience of operators under the two systems invariably leads to the conclusion that only those who fear the risks of competition desire to operate under the frozen system of cartelization.

Usually the primary purpose of production control is to control prices.

There are a few examples of government production control for other purposes and which so far have escaped the failure attendant upon artificial price manipulation schemes.

The control for purposes of conservation of the production of crude petroleum by establishment of rules of competition designed to nullify the deleterious effects of the law of capture and the express and implied obligations of "diligent operation" have to a large extent so far met with success. This

success has been due to the freedom of action of the regulators, irrespective of political pressures, and the wholehearted cooperation of the producers themselves. When either political pressure has been present or cooperation of producers has been absent, control has not been completely effective.

Scientific study in bringing to light the unique factors of oil accumulation underground, its entrapment there, and the unique factors of production, has created by and large a general interest in a cooperative program of conservation and prorated production, thus permitting sensible competition in production to survive. This augurs well for success in this particular field of combined industrial and governmental activity - sometimes referred to as one of the new techniques of petroleum production - provided (and this qualification is a large one) political considerations do not control the activities of the governmental authorities.

Other production control schemes, such as the effort to control production of agricultural commodities, attempted under the now familiar Agricultural Adjustment Act of the Federal Government of the United States, and its successor, have generally failed. It is contended by many economists that all such schemes will invariably fail because they are based upon the economic fallacy of scarcity and involve in addition unpredictable factors such as the weather.

In England under the common law and in the Dominions of the British Commonwealth of Nations, in the United States and in the various States of

the American Union, by statute an effort has been made to prohibit monopolies and trade restraints. As these laws have developed through the adjudication of cases, it has become apparent that the design and pattern of the laws in this field have had behind it the effort to preserve a fair competitive system of free enterprise.

The primary vices of this system of regulation have been (1) the obscurity of the laws, so that business men whose conduct they were designed to regulate have been unable to know in advance whether any contemplated activity was or was not a violation of law, and (2) that they have too often been used as a means of harassment of business or as an effort to establish the particular economic doctrine of the individual charged with their enforcement.

In spite of these vices, these laws on the whole have been beneficial. It is generally admitted, however, that they need clarification.

Direct price fixing by government fiat in some form or other has been attempted for centuries. The one outstanding characteristic of these attempts has been that they have always ended in failure.

The reasons for the failure of such attempts have been legion. However, these various reasons may be classified as follows:

First: Economic laws cannot be thus controlled. When prices are fixed by government decree, attention at first is not paid to the other factors affecting price such as supply and demand. In case of a shortage of supply or an unusual increase in demand, prices would tend to rise. If government endeavors to prevent this, sellers urder

such circumstances are unable to operate profitably. In due course the government price structure breaks down. On the other hand, if there be a surplus of supply in relation to demand, the tendency is for prices to fall. Government, recognizing that too drastic price drops might be disastrous to the economy, likewise attempts to prevent this. Business then becomes an operation of secret price cutting and in due course government-fixed price structures again collapse.

Second: A necessary corollary to the attempt to fix commodity prices by government fiat is that such efforts inevitably lead to control of all economic factors affecting price. These factors are so numerous that price control practically requires control of the entire business system.

Third: Government price fixing results from the activity of pressure groups, and far too much attention is given to political considerations in the fixation of prices. Sellers naturally are interested in receiving a profitable price. Consumers sometimes believe that such prices are too high. Thus, seller groups and buyer groups become arrayed against each other and exert pressure against the governmental price fixing agency to fix the price in such a way as to conform to their respective views. Both cannot be satisfied. Neither seldom ever is satisfied. The better organized group and the one which can exert the strongest pressure usually is the victor in such a controversy. Economic considerations are left in the background, but economic laws are inexorable. In due course

artificial prices fixed as a result of political pressure break down and the whole effort becomes a colossal failure.

Fourth: Enforcement of price fixing decrees is practically impossible. When one considers that there are hundreds of retail outlets each completing from a few to many transactions per day, the magnitude of the enforcement problem is readily apparent. Adequate enforcement would require as many policemen as there are places of sale. It may be argued that since there are only a few suppliers of gasoline in Alberta, it would be a relatively easy matter to control price structures by controlling the prices at which the manufacturing suppliers sell their products. This is a fallacy on its face. There are in fact many hundreds of retail gasoline dealers in Alberta. Each dealer selling to the consumer would be affected by a price fixing order. Each transaction and each sale made by him would offer an opportunity to violate the law one way or another. The dealers in turn would exert pressure on their manufacturing suppliers. Successful enforcement would require supervision by the price fixing agency of every sales transaction. Experience elsewhere in the past has proved that price fixing cannot be established by making sellers of commodities the enforcement agencies.

Fifth: the governmental price fixing agency of necessity is too far removed from marketing operations to adjust prices when adjustment is necessary with the rapidity required to prevent economic dislocations. There is serious delay between the time the necessity for price adjustment arises and the time of final action by the governmental agency. The result is that the

price fixed is in nearly all instances an artificial as distinguished from a natural price. When other than a natural price has been fixed, economic dislocations result through the operation of other factors normally affecting price.

It seems too obvious for argument that a governmental agency not directly concerned with all the business operations could not possibly understand and take prompt action for price control that normal business operations would require.

And Sixth: Government price fixing, whether direct or indirect, is not sound government policy and is reactionary.

It seems fair to conclude, therefore, with an author who in 1922 wrote that

> " The history of government limitation of price seems "to teach one clear lesson: that in attempting to "ease the burdens of the people in a time of high "prices by artificially setting a limit to them, the "people are not relieved, but only exchange one set "of ills for another which is greater. Among other "ills are (1) the withholding of goods from the "market because, consumers, being in the majority, "price fixing is usually in their interest; (2) the "dividing of the community into two hostile camps, "one only of which considers that the government acts "in its interests; (3) the practical difficulties of "enforcing such limitation in prices which in the very "nature of the case requires the cooperation of both "producer and consumer to make it effective."

G. W. Ray.

The boosting of prices in a time of low prices by artificially fixing minimum prices has like results. Among the ills produced in such a case are (1)the influx of goods into the market and (2) the acceleration of production and the consequent building of surpluses as well as all the others except the first mentioned in the above quotation.

Indirect price fixing is a method of price control resulting from the control of economic factors affecting price, such as limitation of production or consumption. It is not always designed or intended to effect a balance of supply and demand and in that way to effect a natural economic price. Very often such controls seek to establish and maintain an imbalance, so that through a shortage of supply in relation to demand, prices will be forced to a higher level. On the other hand, if it is considered that prices are too high, control often is directed toward a limitation of consumption or demand, thus creating a surplus of supply and a consequent lowering of price.

Various examples of this sort of thing, including, among others, the Yucatan control of Sisal, the Brazilian valorization of coffee, various cotton control schemes, the Stevenson restriction plan, the Japanese valorization of silk, the Chadbourne sugar control plan, and the tin pool were mentioned in the testimony. All plans of this kind of which we have any record have ended in failure.

I heard of another the other day in talking to this friend of mine who had just returned

from Germany, just to show the efforts of those men in government. In Germany they thought they had insufficient wheat. They tried to fix a wheat price by government monopoly. It failed. One of the things that they could do to maintain price was to curtail consumption. I think the purpose was to drive the price down and, if I remember, have a surplus demand. It was. So they went about curtailing consumption and to curtail consumption they passed a regulation that the makers of bread should not be allowed to sell bread until twenty-four hours after it was baked, and later until forty-eight hours after it was baked, the theory being that people would eat less stale bread than they would fresh bread. It seems to me that that is so stupid, but it shows the ultimate in this sort of thing.

Now, let us return to the general questions that I raised in commencing my discussion.

THE CHAIRMAN: Well, I think we will have a short recess.

MR. RAY: Yes, Sir, I would be delighted.

(At this stage there was a short recess.)

Now I want to bring to your attention very briefly some of the facts about the National Industrial Recovery Act which, as you know, involved to some extent an intervening cushioning board between Industry and Government.

That Act was an effort to find a workable technique for the establishment of fairness of competition. The country at the time of this was in serious trouble. Business was demoralized. Prices stood at ruinous levels. Unemployment was rampant. Under such circumstances cut-throat competition was in the ascendency. Marketers able to buy at bankruptcy prices and hard traders were forcing prices to still lower levels. "Chiselers" - those who bought at distress prices and resold at relatively reasonable prices - were the tails that wagged the dogs of our national economy. Under these circumstances, it was considered advisable to find quickly a method where a generally accepted standard of fairness could be re-established in the land. This naturally involved a search for a technique designed to eliminate competitive abuses.

The Act declared that "a national emergency, productive of widespread unemployment and disorganization of industry" which burdened interstate and foreign commerce, affected the public welfare and undermined the standards of living of the American people existed.

"Therefore, the Act went on to say, 'it is hereby declared to be the policy of Congress to remove the obstructions to the free flow of interstate and foreign commerce which tends to diminish the amount thereof and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action

among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to promote the fullest possible utilization of present productive capacities of industries, to avoid undue restriction of production, except as may be temporarily required, to increase consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor and otherwise to rehabilitate industry and to conserve natural resources."

To effectuate this declared policy, the President was authorized:

First: To establish such agencies and to utilize such voluntary and uncompensated services, to appoint such officers and employes and to utilize such Federal officers and employes and with the consent of the State such State and local officers or employes as he might find necessary, to prescribe their duties, responsibilities and tenure and to fix their compensation;

Second: To delegate any of the functions and powers granted to him to such officers, agents, and employes as he should designate or appoint and to establish a planning and research agency to aid in carrying out his functions;

Third: Upon application by trade or industrial associations or groups, to approve a code or codes of fair competition for a trade or industry or subdivision thereof represented by the applicant, if the President found that such association or groups

imposed no inequitable restrictions on admission to membership and were truly representative of the trades or industries they purported to represent and that such code or codes were not designed to promote monopolies or to eliminate or suppress small enterprises and would not operate to discriminate against them.

Fourth: Upon his own motion or in case of complaint in the absence of a voluntary code to impose a compulsory code;

Fifth: To enter into agreements with or to approve voluntary agreements between and among persons engaged in any trade or industry, labor organizations and trade or industrial organizations, associations or groups relating to any trade or industry, if in his judgment such agreements would aid in effectuating the policy of the Act;

Sixth: To prescribe such rules and regulations as might be necessary to carry out the purposes of the Act and to cancel or modify any order, approval, rule or regulation issued by him or his delegate.

While the Act was in effect and for sixty days thereafter, any code agreement or license approved, prescribed or issued and in effect under the Act and any action complying with the provisions thereof taken during such period were declared to be exempt from the provisions of the anti-trust laws of the United States.

This did not mean that the anti-trust laws were shelved for the time being and that there existed an open invitation for the establishment of monopoly. Before any code or agreement could be approved, it had to be established that it was not monopolistic in

character and was not of a nature to be oppressive to small enterprise. Under the Act, then, the agreement or code could not be approved if in conflict with the most important and far-reaching provisions of the anti-trust laws. All that the N. I. R. A. did was to provide that if a finding were made by the President that the provisions of the Code or agreement did not in these respects conflict with the anti-trust laws no one could be prosecuted for compliance with the provisions of the code or agreement during the life of the Act.

The Act did permit an administrative interpretation and application of the monopoly provisions of the anti-trust acts which was in accord with the philosophy of those acts as expressed in the Chicago Board of Trade and Appalachian Coals cases. For the first time an examination was permitted into the actual workings of the competitive system. The code provisions adopted were designed not to abolish competition in the various industries but to make it function in a sounder and healthier way.

The National Industrial Recovery Act contained the following provisions respecting violation of any code:

First: The imposition of a fine of $500 for each offense, and each day such violation continued was deemed a separate offense;

Second: The issuance of an injunction in the Federal Courts to prevent and restrain violation; and

Third: The licensing of business units under certain circumstances and the revocation of such licenses for violation of the provisions thereof.

In due course various groups in the petroleum industry proposed a code of fair competition to govern the activities of the industry. After extended negotiations, had in an effort to iron out complications, in many respects without success, the petroleum code was approved in August 1933 and became effective in that same year in September.

The Secretary of the Interior was designated by the President as the President's delegate to administer the Code. The Administrator in turn appointed a Petroleum Administrative Board to assist him in his administrative capacity. A Planning and Coordination Committee and several subcommittees were organized to further the administration of the Code. The Planning and Coordination Committee was composed of three representatives of government and the public and several representatives of industry.

The Petroleum Code thus approved was an elaborate document containing regulations relating to hours and wages of employes, production of crude petroleum, refining and marketing. This code was the law of the industry.

It was supposed to be a joint effort on the part of government and industry to effect industrial recovery.

One of the major conflicts in the industry at the time of the promulgation of the code involved the desirability of authorizing the President or his delegate to fix prices of petroleum products. Price

fixing provisions were in due course inserted. Price fixing orders were issued but never became effective.

There were those who opposed the National Industrial Recovery Act idea on the ground that it would be productive of monopoly and that suspension of the anti-trust laws would ultimately result in greater evils than those then existing. There was a definite clash of two antithetical doctrines. Those who viewed the Sherman Act, that is the Federal Anti-trust Act, as they would construe it and not as construed by the courts, and its strict enforcement, as construed by them, as the only sure method of attaining and thereafter maintaining their idea of an ideal competitive system were arrayed against the advocates of the government -business partnership theory, who believed that the Sherman Act was too uncertain and that the crystallization of the law thereunder was too slow a process for the development of techniques needed for the improvement of the competitive system.

All through the N. I. R. A. period the conflict of philosophies was evidenced by clashes of government policy. These clashes usually did not come into the open and became apparent only with the passage of time. For example, the Department of Justice, which ultimately became the principal enforcing agency, was unwilling to enforce code provisions and the law either because of a disbelief in their provisions or because they feared to risk defeat on constitutional grounds.

On the other hand, the administrative agencies were constantly threatening to "crack

down". Undoubtedly, the administrative agencies meant what they said, but they were impotent to move without the cooperation of the enforcing agency. As a consequence, the N. I. R. A. and the codes promulgated thereunder were jettisoned by the relative inactivity of the enforcing agencies.

Enforcement of the codes, including the petroleum code, therefore, bogged down largely because of this conflict, the unwillingness of enforcing agencies to proceed, the impossibility under the circumstances of effective enforcement, the endeavor to accomplish too much under the code system, the widespread delegation, and in some instances seizure, of authority, and political pressure from pressure groups.

Perhaps, of these several contributing causes, the fact that more than was practicable was attempted in the way of the improvement of the functioning of competition was the chief cause; code provisions often became as unenforceable as the prohibition law, and, consequently, bore with undue severity upon those who tried to observe them.

For example, the petroleum code, adopted as a result of the N. I. R. A., covered, as we have said, all phases of industrial operations, including regulation of wages and hours, production, refining and marketing. As a result of the attack on depression over such a wide front, fundamental problems causing the difficulty were often forgotten. The petroleum code never quite "stayed put". It was changed practically from day to day by amendments, modifications and interpretations of provisions. As a result, it became in a relatively brief

time an incomprehensible jargon. No minor dislocation was too trivial for attention, and often minor dislocations resulted in code amendments. Companies endeavoring to abide by the code were unable to keep their field forces currently advised of the changes. Often by the time changes reached the field the changes themselves had been in turn modified, altered or repealed. Changes flowed from Washington with such rapidity that field forces became discouraged and sometimes gave up trying to keep track of them.

But this situation was not a fault of the law or of codes originally promulgated thereunder. Some codes expressly permitted modifications of provisions, although they did not permit of wholesale amendment or other alteration. Amendments enlarging obligations were perhaps due to two factors: First, the intense activity of pressure groups, and second, a psychology that administrative authorities, particularly in government, had been empowered to run the show pretty much as they pleased. Neither the law nor its under-lying philosophy contemplated this activity. Nevertheless, it is an undeniable fact that sometimes there was far too much government dictation and too little consultation with business; the partnership was too one-sided; eventually business became suspicious and then pugnacious.

Of course, this was not true of all codes or code authorities. Similar experiences, however, led to similar difficulties in some other industries and, as a consequence, the code system was in a state of

chaotic breakdown at the time the system was nullified by the decision of the Supreme Court holding certain phases of the National Industrial Recovery Act unconstitutional.

One cannot absolutely condemn the N. I. R. A. or the code theory on the limited experience of that law. That experience taught many lessons. Among those lessons were these: first, that power not expressly granted to government should not be exercised ; that too much power should not be granted in the first place; secondly, that fundamentals should be the basis of action; and thirdly, that fact should be isolated from opinion, and action taken accordingly. There is little doubt that good as well as bad resulted from the code system. Any realistic view compels the conclusion that its underlying philosophy cannot be arbitrarily discarded.

The necessity still exists for finding techniques for dealing constructively with the maladjustments of competition and not merely proceeding against the fraudulent and oppressive aspects of its working, which are themselves unlawful. We again have the problem of a technique to deal with. While that technique should not be the same as was developed in the N. I. R. A., nevertheless there is much that is useful that can be derived from the machinery and experience of that experiment.

Now after the kind of administration that we had in the National Industrial Recovery Act, - and I am not trying to be critical because if there is any one thing that I do believe in it is that we must find a technique to make the competitive system workable at its best and I shall come to that in a little time, but there were those two

philosophies which were constantly in impact one upon the other and as a result the thing just never had a chance to do its job and after the code went into the discard those who believed in, I imagine, the competitive system went rampant in their accusations of monopoly. "Our country,' so they said, 'was honeycombed with monopoly. The N.I.R.A. had built these gigantic monopolies."

I was rather amused not long ago in reading from a magazine which is published by the school teachers of New York, it is called "Classroom Boners" and in this little book they insert the answers of students that amuse them, answers to questions which were propounded and in an examination which was held in September of this year, called the Regent's examination, one of the questions which was propounded to the ninth grade students in high school was "what is a monopoly"? There had been a lot said in the newspapers about that, quite a little, and his reply was this:

"A trust or monopoly is a large firm which is looking "forward to better business in the near future."

Well that is the state of mind at which we have arrived in respect of that subject there.

Now I want to deal for a moment with the general question which I raised at the beginning of this discussion.

We have said that if there is to be government regulation of industry or prices there should be (1) a government possessed of power to regulate successfully, (2) the necessity for taking such action, (3) the application of a method which would eliminate discovered

evils, improve existing conditions and prevent the production of other evils, and (4) a certainty, not a speculative surmise, that the method thus selected will do a better job of improving the economy than a state of freedom would do.

In connection with these assertions, we propounded these questions:

First: Is government qualified and able to regulate industry as successfully as the natural laws of trade now do it and have done it?

Second: Does a provable necessity for the regulation of any phase of the petroleum industry in Alberta exist?

Third: Is there a method of regulation which will be more effective in improving the economy than private enterprise has been and now is?

Government, for the various reasons previously stated, is not qualified and able to operate, control and regulate industry as successfully as natural laws of trade now do it and have done it, when the method employed is such that government substitutes itself in the role of manager of business. Government's proper role is todeclare, through law, the rules of competition and to act as a referee in seeing that those rules are enforced. When government steps beyond this method of regulation it becomes impotent to effectively handle the situation.

Another factor that creates this impotence is that government management of business often requires the isolation of the area over which government has jurisdiction. Partial isolation, through import

tariffs and commercial regulations, did not provide immunity either to the United States or Canada to the economic depression initiated in 1929. Even a greater degree of isolation by means of higher tariffs and more restrictions, would have had slight effect under the circumstances then existing, provided any commercial contacts with foreign markets remained open at all. The only possible chance for economic isolation to succeed in maintaining business prosperity, and the maintenance of business prosperity must be the objective of government interference, would be for each country to shut itself off completely from all commercail and financial intercourse with other countries and also to control its own internal affairs so that no serious maladjustments could occur. This obviously could not be done if the government attempting it did not have the raw materials necessary for its economic existence. Alberta does not have all the raw materials, including petroleum, that it needs for the Canadian market. This is reductio ad absurdum.

Government operation and government control wherein the government attempts to manage business are not workable methods when viewed from the standpoint of results attained. The evidence submitted to the Commission proves beyond doubt that the people of nations operating under a system of free competitive enterprise enjoy a much higher standard of living than the people of nations whose economy is based upon the theory of dictation and force.

The performance of the petroleum industry has been but a part of that system of

free competitive enterprise which has created in North America the highest standard of living in the world. The people of the United States and Canada enjoy the use of more of the facilities available than elsewhere in the world at lower cost. It is often said that in these troublous times the world must choose between democratic and autocratic institutions, that the nations must choose between freedom and dictation, but when one reviews the record of performance under the two systems, it becomes extremely difficult for those of us who live in North American to see how there can be more than one choice. As we see it, there is no alternative to freedom.

Texas Canadaasks for nothing more than an opportunity to compete under conditions where the advantage goes to the competitior which constantly improves its products and endeavors to better serve the public. The competitive system of free enterprise has proved that it is by far the best system for public well-being in existence anywhere in the world. To change that system and to endeavor to supplant it with schemes of various kinds for government control, practically all of which have been tried time and time again without success, is to take a backward step. Such a step cannot be taken in the name of reform, as reform contemplates improvement.

A great Englishman had this to say one time, one hundred and fifty years ago, and it is as true today as it was then:

" The path to happiness for nations
"and men does not lie in sweeping innovations; always
"it lies in doing justice to the past, in welcoming

"what it has achieved as 'an entailed inheritance'
"and even in the hour of reform, in carrying it
"through in a spirit of gratitude and reverence toward
"existing institutions, which are not to be remade by
"the energies of a single generation of radical
"reformers, however ardent their passion for human
"happiness may be."

Freedom is not simply a byword; it is both the means and the end to the establishment of a virile and energetic people. Without it nations have not done and cannot do as well. If there be any lesson of history well taught it is this lesson; the seizure by government of the functions of business is a certain road to the paralysis of progress.

The democratic concept of government is that government employees and government representatives are, in fact, the servants of the people and not their masters. Business executives, likewise, are public servants. They desire to serve the public well by effecting improved living standards. Enlightened self-interest dictates such a policy. Government executives and business executives, then, must not wage an unceasing battle to dominate. Domination in the last analysis is a matter of principle - not a scheme for the ascendency of particular men.

The principle which must dominate is the principle of freedom - freedom within the boundaries of appropriate regulation for the public good.

Government regulation, then, should be confined to insuring the freedom of fair and

open competition together with the protection of the rights of third parties. For all concerned, the competitors, employees, employers, consumers and the public, regulation and control are inherently different. Regulation functions from the outside, fixes in advance the rules of conduct and should deal impartially with all. Control penetrates into the interior and becomes a part of managerial authority.

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When government control of business enters, the effectiveness of private management is impaired, if not destroyed. Whenever regulation of enterprise is imposed by government it should be imposed in specific, express statutes and administered in so far as possible by the established executive department of government. Any necessary special agencies should be given a minimum of administrative latitude and should be required to exercise administrative discretion by the issuance of specific regulations with opportunity for public hearing thereon. Regulations issued by special agencies and the administrative rulings of both executive departments and special agencies of government should be subject to adequate judicial review of the law and the facts by the established judicial departments of government.

Government should not attempt by compulsion, inducement or threat to control the kind or quantity of goods and services to be produced and distributed to the people beyond measures required ito insure iair, free and open competition and to protect the public health. State controlled enterprise has in all instances where tried failed to reach the peak of well-being that private enterprise has reached. The inevitable result of domination by men who possess neither the experience nor the knowledge to make the system function well.

Government operation is not a workable method. Government control wherein the government attempts to manage business is not a workable method. The only method, in fact, which in previous experience has worked to any extent has been

Thus, [illegible] control

of [illegible] methods, [illegible] of private management

[illegible], if not destroyed. [illegible] however, [illegible]

is [illegible] is impossible [illegible] be

[illegible] in practice, [illegible] and administered

[illegible] by the [illegible] labor [illegible]

[illegible] extent [illegible] necessary [illegible]

[illegible] given [illegible]

[illegible] administrative [illegible]

[illegible] by the issuance of [illegible] with

[illegible] threatening [illegible]

[illegible] and the administrative

[illegible] to [illegible]

[illegible] should be subject [illegible]

[illegible] by the [illegible]

[illegible] departments [illegible].

Government should not

exerted by a [illegible], inducement or threat to correct

the [illegible] quality [illegible] goods and services to [illegible]

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enterprise has in all instances where tried failed to

reach the goal of well-being that private enterprise

has reached. The [illegible] elimination

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Nor [illegible]

[illegible]

[illegible]

[illegible]

that method where government has established rules of competition and has acted as referee in their enforcement. On our past experience, therefore, we can look forward to the improvement in our social order if and only if government accepts the workable role, proceeds through the accurate acquisition of knowledge to change the rules of competition as conditions require without in any way endangering the fundamental concept of free competition and private enterprise. This method can and should be applied to the petroleum industry for two reasons:

1. The erroneous rules of property under which oil and gas have been produced until very recently do not permit of orderly competition.
2. Competition in addition to being free and open must also be fair. Because of the vices of the competitive system previously discussed, fairness of competition is sometimes impossible.

Furthermore, the laws designed to assure fairness of competition are sometimes enforced in such a way as to lead to an every-men-for-himself competitive system because co-operative activity through such an enforcement policy is discouraged.

By a long, tedious and laborious process, the American economy has been approaching the ideal under which competitive enterprise has been required to abide by reasonable rules imposing upon competitors an obligation to conduct their business fairly. We should not now throw this overboard. We

should not be forcefully thrown back to the law of the jungle.

In considering the competitive system, we should keep certain fundamental, realistic facts in mind:

1. Competition has many virtues. It creates competitive pressure which imposes upon all the competitors alike a healthy compulsion to better serve the public by the development of techniques for constantly improving production and distribution methods and constantly improving commodities at constantly decreasing prices.
2. The competitive system also has vices. Unhealthy, uneconomic and unfair competitive practices often worm their way into the competitive system. Economic imbalance is thus produced. Competitive abuses take their place alongside the competitive virtues.
3. Co-operative activity likewise has its virtues. Very often the only way that competitive abuses can be eliminated is by co-operative activity. Thus when the competitive abuses are eliminated by co-operative activity the economic and social order is improved by the restoration of economic balance.
4. Co-operation also has vices. These vices evidence themselves in (a) monopoly, (b) the freezing of business and (c) the consequent elimination of competitive pressure.

5. What we need, therefore, is a technique which will combine the virtues and eliminate the vices of both competition and co-operation.

We should endeavour to improve a free open and fair competitive system by a continual search for techniques for its improvement. As and when these techniques are discovered they should be made the rules of competition under which government would assume the obligation of enforcement.

The design of the law in so far as possible should be such that business men can know in advance whether or not their contemplated activity will or will not violate the law.

One method whereby this could be attained would be by amendment of existing law in such a way as to permit concerted activity through agreements approved by the government in advance under which men acting in the performance of such an agreement would enjoy immunity during the time that the agreement remained in full force and effect.

Such agreements should not be approved under any circumstances unless preceded by appropriate notice and hearing. They should be fully debated and their necessity under existing circumstances clearly proved. The proponent of such an agreement in requesting its approval should present to the government agency having jurisdiction sufficient economic facts to warrant that agency's making a finding that such agreement, if promulgated, would be reasonable and in the public interest and therefore not violative of anti-trust laws.

If such a technique were adopted and if it be a fact that excessive facilities, for example, exist in the distribution of petroleum products, the excess could be eliminated in that way. The elimination, in such a case, would be from choice of the owners, not from force of government. Efforts could be undertaken to eliminate such competitive abuses as might arise. Likewise, efforts to eliminate economic dislocations by the restoration of balance for imbalance in the economy could be attempted.

There may be other and better techniques than this but any technique should incorporate within its boundaries two fundamental principles:

1. An honest effort to improve the competitive system of free enterprise; and
2. Co-operation, rather than antagonism, between government and business.

Now this declaratory judgment concerning the validity of the agreement, the method that I have suggested, is one that is initiated by business men who feel the impact in their daily lives of every economic dislocation that occurs. Unitization should reside where those economic dislocations are felt. It does not require the establishment of any new Board. We have enough governmental agencies to administer a thing of that kind. It is a scheme that would do these two things that I have just mentioned; it would lead to the preservation of a system of free competitive enterprise conducted fairly; it also would involve co-operation between governments and business.

THE CHAIRMAN: Mr. Ray, what advantage do you see in, speaking of the parties as industry on one side and the government on the other, of putting the bane of your disapproval upon an intervening body. As I understand your argument, this phase of it, you agreed that there should be rules of competition?

MR. RAY: Undoubtedly.

THE CHAIRMAN: You agree that there are vices as well as virtues in the competitive system, and to that end that there should be governmental rules that will make for the advantage of the industry as well as those who have to do with it; and that the government having made such rules should limit itself to acting as referee to see that they are carried out. That is, as I appreciate it, your position on this point. It strikes me, and I would like to have the benefit of your views about it, why you shrink from an intervening body that is one that is informed, because it is close to the industry; as distinguished from an uninformed legislature dealing with your problems.

MR. RAY: Oh no, do not misunderstand me for a minute. It is not that sort of thing. You have misunderstood my point of view. Here is my point. You do need a governmental agency that is qualified to pass upon these agreements when they are presented. That agency, whatever it is, must be composed of men who will take objective views of things. For that reason I would impose upon the proponents of an agreement the absolute burden of proof, to prove that the agreements proposed are in the public interest. Now as to the agency. Why another one? We have got agencies of

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that kind.

THE CHAIRMAN: What are they?

MR. RAY: One is Mr. Frawley's job here. He is charged, I think, with the responsibility for the enforcement of the anti-trust laws in this Province. Aren't you? I do not know. Maybe we ought to be talking to the Dominion. I rather think we ought. But the agencies charged with these laws, the ones that are designed to regulate our business affairs, and particularly to preserve the competitive system, are already in existence. Another body that is already in existence is the Ministry of Trade and Finance. Don't you have something of that kind?

MR. FRAWLEY: Trade and Industry.

MR. RAY: We have in the United States a Department of Commerce and yet with that agency already in existence we went out of our way to create a Federal Trade Commission. I think that was just a surplus. We did not need it. We have enough governmental agencies. Let us keep the cost of government down by having fewer.

THE CHAIRMAN: Yes, of course, but the fact is.....

MR. RAY: I do not shrink from having government co-operate. I do shrink from having industry by industry by industry boards. The first thing you know you will have three hundred boards at an additional cost that will be staggering.

THE CHAIRMAN: Yes, of course, but any evidence before us insofar as it has been critical of legislation and control, whether having to do with

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conservation or with other phases of regulation, has been to the effect that it has been propounded by those who are uninformed and has been carried out by those who have not a full appreciation of the needs and requirements of business; that it has been ineffective because every move by anybody has been without adequate knowledge. And I am putting it to you very seriously, because I am thinking very seriously about it, that when you say you have a Department of State, yes. You have Departments of Government but they are very much concerned with many problems, of which this is but one, and to which surely they could have but little time to give attention or thought. So it seems to me, as Dr. Frey has said and as you doubtless have read, that there might be that intervening cushion of a body that was not out gunning for the industry, but seeking to serve it, while keeping a watchful eye on the public interest to see that wherever the government acted it acted upon well-informed advice, after due hearing from anybody interested before a body that had acquired the knowledge so that it understands what was said to them; a body wholly independent, divorced from any vote-catching ideas, because it would not be in the least concerned with it; and it would be charged with the responsibility of seeing to it that the industry was protected and advanced in every way, just as surely as those who dealt with the industry. I do not think you get that from departments of government that are concerned with a thousand other things, and who give but a passing thought and who listening to those who talk the loudest pass legislation that might in the end serve the people that

it is intended to help, very poorly. I am against half-baked legislation.

MR. RAY: So am I, very definitely. It looks to a flexible system, what I have in mind, because it looks to flexible co-operation, and the only question in my mind is whether or not we need any additional agencies and there is no way under Heaven, Mr. Chairman, there is no way under Heaven to legislate knowledge into anybody's head. I mean the selection of your Board and your desire to have somebody well-informed about business conditions, is something that you cannot do by the creation of a Board. I do not know how to tell you to do that.

THE CHAIRMAN: Why not?

MR. RAY: There is not any way to do it, to legislate knowledge into the head of anybody.

THE CHAIRMAN: Why not select somebody who has the knowledge. Supposing you were on it, you would have knowledge of the process as an advocate?

MR. RAY: If I were on it and dealing with copper, for example, I would know precisely nothing.

THE CHAIRMAN: I am not talking about you dealing with copper. But supposing you were on a Board dealing with oil, don't you think you would be better informed than most people in the legislature?

MR. RAY: I do not know whether I would be or not. I have some ideas I have tried to advance here.

THE CHAIRMAN: Well, one hopes you would be, otherwise you are leading us astray.

MR. RAY: I am making three days

of pretention.

THE CHAIRMAN: What I am getting at, Mr. Ray, so that we won't be talking at cross-purposes, - a Board that is concerned with this industry is surely going to get informed. par exanple, it would be quite idle for anybody in Canada to say that the Transportation Board that has functioned for years has no knowledge of the railway business. It would be quite idle to say that. They have listened to the brightest minds in the industry for years and years and years and they know something about it.

MR. RAY: They should undoubtedly.

THE CHAIRMAN: It would be quite idle to say that the Grain Board of Canada knows nothing about the grain business because they are not actively engaged in it. They do, and perhaps those who are most loud in the praise of it are those who are in the industry. It has saved them the harassment of unformed government action. It has protected them against the attack of unformed public opinion, which frequently leads to legislative action. It has, in short, servedthose particular branchesof the industry well, and is, to my mind, in consonance with what you yourself are advocating. Intelligent regulation to cope with the vices of the competitive system and get all the benefits there may be in working together, an enforced working together of those who are engaged in that system, to advance them as well as to help the public.

MR. RAY: I think there is a better way, and we are only that far apart. I am going to tell you what the difference is very quickly.

I suppose it is because of my training, but I very much prefer to have a judicial objective approach to questions of this kind, than I would have a group of specialists applying their knowledge to it, because specialists very often have ideas of their own. They get ideas of their own. I have definite ideas of my own. But if we had a judicial determination of the question, here we would be a group of proponents of a thing coming before this judicial mind, that does not know it all. He, therefore, has no particular axe to grind one way or the other. The proponents of that agreement must prove its effect in the public interest, and anybody who does not agree with it is in there trying to tear it down. Now, on the evidence, that man could make up his mind. I very much prefer, if there were some way to do it, if some kind of a declaratory judgment system in courts would pass on the efficacy of these agreements. I think we would get better results, far better results by that method than we would get from specialists who do invariably get prejudices. Now you ask me if I would be any good on a board of that kind. Now I am not so sure I would. I live too close to the industry.

THE CHAIRMAN: Now supposing we had someone representing the industry, someone who might have some knowledge of the industry and yet be concerned with the consumer's position and in this case determine where those things you talk about in the competitive world do not take care of it, that perhaps we are getting it much too cheaply, and that you do not create chaos in industry. I am suggesting to you, I speak now of the personnel because such a Board would only function as well

as the personnel would permit of its functioning - that is quite evident. Now, of course, I entirely agree the approach must be quasi judicial. The body must be independent. They must have no axe to grind. The only importance of their being informed.....

MR. RAY: It must be entirely judicial, Mr. Chairman, I think instead of quasi.

THE CHAIRMAN: Well perhaps so. But they must have knowledge to act intelligently. All right. Are they going on their own knowledge? I suggest no. Where there is a matter of any importance coming up such a body is surely going to hear, have a public hearing of anybody interested. The importance of their having knowledge is only that they may understand and appreciate what they do hear. Not a governing body.

MR. RAY: Not at all. To be given no power at all except to approve or disapprove, in my judgment.

THE CHAIRMAN: And when the legislative body gets a report it is not getting it as a result of having somebody going into the Minister's office and shrieking to high Heaven about what somebody else did to him. They are getting an informed report.

MR. RAY: Here is where we are just a little different again. What I am suggesting is not that as a result of the submissions of agreement or suggestions that there should be any further legislation. The legislation should come first. The agency, whatever it is, and I think there are plenty of existing agencies that could do this work, would be authorized in advance to do only two things: "To approve or disapprove all the agreements submitted to them." That is all. I think

you should go no further, because that way you are going to have industry coming in with submissions "We are needing to co-operate for the welfare of this industry and of the people and this is what we think should be done." Now if they cannot prove the efficacy of that agreement, just as in a court the judgment would be "Go home and peddle your peanuts. You are here inadvisedly."

But if they have a constructive suggestion, then they would say "That is a fine thing. You have shown us that it will effect improvements in the economy and we approve," and that ends their function. That ends their function.

MR. FRAWLEY: Who is that?

THE CHAIRMAN: What agency? You say there are plenty. Name me one?

MR. RAY: Well I think the best place for it would be in the Ministry of Trade and Commerce if you have got such a thing.

THE CHAIRMAN: Yes, we have.

MR. FRAWLEY: We have heard all about them.

MR. RAY: Or preferably still, I would like to have it an application for a declaratory judgment by a court. That is not a new technique. It is working very very effectively where it is being tried.

THE CHAIRMAN: The Trade and Commerce Department has a Price Spreads Board par example right now. Do you think it should go there?

MR. MACLEOD: Might I suggest a good example, Mr. O'Mara's department. He is in the

Secretary of State's office and he is in the department administering company law. He is undoubtedly an expert.

THE CHAIRMAN: I know. We have heard suggestions before of removing this to Ottawa. But after all thus far we have the only oil field in Canada in Alberta.

MR. RAY: I know.....

THE CHAIRMAN: Thus far.

MR. RAY: That does not isolate Alberta from the rest of this Dominion or from other markets elsewhere.

THE CHAIRMAN: That is right.

MR. RAY: One of the things I was going to come to is that this sort of thing, if we really are interested in trying to improve our economy, has got to be so far as the law is concerned, Dominion wide. If we have a thing of this kind in the United States it has got to be as wide as the country. Otherwise you will have people doing things in this small segment of the economy that might have widespread effects elsewhere. It cannot be a thing that is set up in too limited a way.

THE CHAIRMAN: Mr. Ray, you have a very different situation in the United States. You have not one pool in the United States in one State, at one corner of your country which is primarily concerned with the oil industry of the United States. I am speaking only of the Turner Valley situation. I do not know anything about your Constitutional problems. We have some here. This Board has to recognize that there

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are Constitutional limitations to what may be done in this Province by the government of this Province to help or harm the industry as the case may be. Equally, there are limitations upon what the Dominion Government can do, very grave and serious limitations, let me add at once. And if you are only setting up one agency, certainly one would be inclined to think, having regard to the respective powers of each, that except for those who definitely want a laissez-faire policy and feel if they must have somebody they want it as far away as possible, I would say that the State or Provincial jurisdiction would probably prove to be a much wider one. But I do not understand industry shrinking from the idea, since they know there will be regulations that it should not act upon the advice of an informed body interested only in the advancement of the interests of the industry quite as much as anybody else; a body capable of hearing in a judicial fashion what anybody and everybody has to say ere these regulations are set up. Whether they be in respect of conservation or anything else pertaining to this industry. I am at a loss to see why you want to be in the Deputy Minister's office with one man talking to him one day and another man another day and the other man the other day, instead of a body saying "Here is something of interest. There is something that has come up and we want to hear everybody concerned. We will hear you all next Thursday."

MR. RAY: My own preference would be, as I say, to go before the courts of the land with your proposal, and wherever they have got the practice.....

THE CHAIRMAN: But courts are only concerned with disputes.

MR. RAY: And this is a matter of dispute.

THE CHAIRMAN: What I am suggesting to you is that this be not a matter of dispute and that it might be kept out of the realm of dispute.

MR. RAY: You will never have any kind of an agreement - now I am being a prophet, but this is based on the past experience in this industry - you will never have any suggestions for the curing of any of the evils in the petroleum industry that will be unanimous. Just remember that. You will have adversaries, and there will be disputes. I was trying to point out here a little while back in discussing one of the inherent features of competition, and it was this, that the man who adopts a practice believes it is fair. It might or might not be fair. The people who are hurt by those practices believe they are unfair. An agreement is an effort to compromise those two points of view. That is just as inherent in competition as anything on earth is. You are never going to have the whole industry walk in and say "Here is what we think". You are going to have disputes. You are going to have to have a referee who will resolve that controversy and I do not know of any better body of men in the world than judges who best know the technique for resolving disputes. They are specialists in that respect.

THE CHAIRMAN: Well perhaps such a body should be presided over by a judge, and I will tell you one judge that won't be there. But I do not know

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that we are apart really.

MR. RAY: I do not think we are in principle at all. I think we are apart only in one respect, and that is the simple question: Is there a necessity for the creation of any additional governmental agency? I do not think there is any necessity for it. Now to go back to this question of conservation for a minute. Conservation boards, I think, should be local. They have got fields, here is a field in Alberta where these men on the Conservation Board can give specialized attention to the particular conditions in that field in order to perfect the development of that field according to the optimum of engineering practice. Now that is an entirely different thing.....

THE CHAIRMAN: Why?

MR. RAY: An entirely different thing from this other thing. All the things that affect the whole economy, by taking the competitive abuses raised here - and they might be just one small factor in the effect on the whole thing. It may go back to over-production. Of course, that is a competitive abuse that might lead to economic dislocation. Here you have on the one hand men who are trying to effect an engineering principle, the perfection of an engineering principle. It is not an economical matter so much as it is an engineering problem for the development of that field.

THE CHAIRMAN: And surely something more.

MR. RAY: I am going to get to that this afternoon.

THE CHAIRMAN: The matter of equities is affected very seriously.

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MR. RAY: Undoubtedly.

THE CHAIRMAN: You think there should be a Conservation Board?

MR. RAY: I certainly do.

THE CHAIRMAN: You do not think that should be determined by the Minister of Trade and Commerce?

MR. RAY: No sir, I do not. I think we are dealing with two entirely separate and distinct problems.

THE CHAIRMAN: Why should not the Conservation Board?

MR. RAY: Be the agency?

THE CHAIRMAN: Be the agency?

MR. RAY: It is an existing agency and if it could handle the two separate and distinct problems effectively I would see no objection.

THE CHAIRMAN: Why not? I mean it is an agency already established. Why should it not be concerned with not just one branch dislocated from other branches of inquiry in connection with the industry?

MR. RAY: It certainly is preferable, as I see it, to the creation of any additional agencies, if we have an existing agency that could handle it. That is the only point. I would not create more because of this fact, we have enough expense of government. There are too many expenses, as a matter of fact. We do not want to go out and create a lot of new, if we can utilize what we have got. We have got to economize to that extent.

THE CHAIRMAN: Well you have industry on the one hand. You have the public on the other and you

have a government that rightly or wrongly might be expected to intervene now and then. If, for no other purpose than to set up regulations that you say are necessary, and to see that they are carried out.....

MR. RAY: No, I am not giving any agency and I would not give any agency that I know of any power in this particular matter. When I am talking about regulating, I want them simply to apply a judicial mind to the ascertainment of whether or not an agreement submitted to them and initiated by industry is good or bad for the national economy. That is all, and I would go no further.

THE CHAIRMAN: What does that matter whether you call it agreement or not? The industry suggests regulation. That is all it comes down to does it not?

MR. RAY: You mean that the industry suggests certain rules by agreement among themselves that they consider would be helpful to the industry.

THE CHAIRMAN: Fair rules governing competition.

MR. RAY: I do not want to get into a play on words as to whether it is regulation or what it is. The agreement would have to be enforceable, as an agreement.

THE CHAIRMAN: And I do not want to misunderstand you on the word "agreement". If we are talking about the regulations governing competition, they have to be given the sanction of legislation action either by being the basis of legislative enactment or by being put into.....

MR. RAY: Not at all.

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THE CHAIRMAN: The hands of somebody that makes regulations.

MR. RAY: That would ruin the whole system, the very minute you start making these things as inflexible as law, and you have to go to the legislature for specific approval of agreements you will never find an end to that. That will never work. It won't be workable at all.

THE CHAIRMAN: All right. I am inclined to think that is so. I am trying to find out what precisely you are proposing to do? I am inclined to think that you should not. But when you talk about agreements being approved of, I do not know what you mean. Because agreements between parties are capable of being set aside the day after they are written, and that is not my concept of regulations. Regulations can be changed too, but they are only changed by the body that makes the regulations. Therefore it is not to be expected they will be changed in the afternoon of the day they are written.

MR. RAY: It is all very simple to have the judgment of approval stipulate they shall continue to be in full force and effect between the parties until disapproved upon application.

MR. FRAWLEY: There will have to be a law.

MR. RAY: The only law that stands in the way of things of this kind, the only one is your anti-trust law today. And it stands in the way only because of its obscurity. I have not the slightest doubt that if an agreement is made and co-operative action taken, which

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is in fact in the public interest, that industry can do it already under the cases. The only difficulty is they won't do it because they are not sure. Now, all in the world this suggests is that you get judgment before rather than after the fact of agreement.

MR. COMMMISSIONER LIPSETT: It seems to me, Mr. Ray, that you have not covered at all the case in the first instance where it is impossible for the parties to reach an agreement and secondly that you have not provided for the case where the complaint or the desire for the agreement does not arise within the industry, but arises from a dissatisfied public or a dissatisfied consumer.

MR. RAY: You mean where a group of consumers come in and they think something should be done about what?

MR. COMMISSIONER LIPSETT: About anything, monopoly or price or anything else.

THE CHAIRMAN: Let us say price.

MR. RAY: I think I have already pointed out, or if I have not I have certainly wasted an awful lot of your time and mine, that the prices in this industry are already and always will be so long as you have competition, fixed by the natural forces of competition. They are natural prices. Now the only time you will get prices that are either too high or too low in a competitive market, is when you have economic dislocations.

THE CHAIRMAN: Not at all, Mr. Ray. One other thing you advocated was that taxes were too high.

MR. RAY: I agree.

THE CHAIRMAN: The consumer has a perfect right to say "My gasoline should be 7 cents less."

MR. RAY: The consumer can do that today. You do not need any board for that. The consumer can walk in today and put up an awful shout about the 7 cents tax. He can do it this minute. He can go to his representatives who really in the long run have to do something about it. You cannot reduce revenue without legislation. You cannot, to save your soul, any more than you can raise it. We do not need a board to whom to complain about existing taxation.

THE CHAIRMAN: No, but if you want your complaint to have much weight you had better have some body whose voice will be listened to.

MR. RAY: I cannot agree with that for this reason.....

THE CHAIRMAN: That is the government's daily job is to listen to idle complaints.

MR. RAY: I told you this morning in the United States taxes were getting out of hand, and industry had to do something about it, and consumers had to do something about it. Did they organize a Board? They did not. They complained directly to the Legislature in such force, by good substantial organizations, that the taxes stop, that increase and diversion stop. They were listened to. I mean, they started two, three or four years ago, and if you review the history of taxes in the United States you will find that that was a very effective method. You do not need a Board for that.

THE CHAIRMAN: Let me leave something for you to think over during the lunch hour if I may.

Appreciating all that

you are now saying, this Commission has been sitting for a long time and the reason behind its appointment, I think - I am not sure - was a resolution that the Legislature of the Province of Alberta passed - and again without attempting to speak with knowledge or with accuracy - may I put it to you that perhaps the reason for the Legislature passing that resolution was because there had been a public outcry that the oil companies of the country were charging the public too much. Now if, if.....

MR. RAY: Is that a question that I am supposed to answer later on?

THE CHAIRMAN: No, but listen for a moment. If the submissions you have made before this Commission are sound and are to be accepted, a body capable of understanding them and which had to report to the Legislature would have had some of those submissions placed before it during its Sittings, and there would be no need for the Inquiry which we have been holding during the past year. Now just think that over during the lunch time.

MR. RAY: I submit that you are the man to answer that.

(The Inquiry was here adjourned to be resumed at 2:15 P.M.)

.....

THE CHAIRMAN: All right, Mr. Ray.

MR. RAY: I think before the Commission rose we evidenced some disagreement and in order to make my position entirely clear I want to go back a minute and restate the problem and I think then I will point out the impediment as I see it to the thing which you have questioned me about.

First, competition has virtues; secondly, it has vices; third, co-operation has virtues and also vices.

Now what we need is a technique which will combine these virtues and eliminate the vices of both competition and co-operation.

Now what is the impediment to the solution of our problem? The necessity of a technique is our problem. How do we get it? How are we going to combine the virtues of competition and co-operation? It seems to me that the one outstanding impediment to the acquisition of that technique under the law as it now stands is combination and the psychology of business men concerning its application.

I think I stated when I discussed a few moments ago the anti-trust system that the one possible thing that they presented in the way of a problem was the fact that they were obscure, practically universally admitted, that they need clarification.

Now that is our impediment. I want to leave that for a minute and I want to get into a discussion of this consultative Board and I think that

I should again call upon a little bit of experience which I have had in respect of Boards of like character elsewhere and tell you where I think they have failed; just draw on the wealth of information which we have and see if we cannot do better in this Province.

First of all we do have a consultative Board in the United States. It has been in existence since 1914. The Federal Trade Commission.

The Federal Trade Commission has not, in all of its years functioned to eliminate the competitive abuses in competition. Now why? Well in the first place the Federal Trade Commission was an administrative, quasi Judicial Board appointed for the purpose of administering an act that prohibited unfair competitive processes and how could it function? How could a Board of that kind function?

First of all John Doe thinks that something that Richard Roe is doing is a competitive abuse or an unsound economic practice. John Doe files a complaint with the Board. The Board them advices Richard Roe, the party complained against, with respect to the complaint on such a date for hearing of that complaint. After hearing, if the Commission in its quasi judicial capacity comes to the conclusion that an unfair practice has been used by John Doe, they issue what is called a "Cease and Desist Order". That order requires John Doe to discontinue the use of the practice in vogue.

The Statute also has provision that there shall be a judicial review of the Commissionb findings. As a consequence, John Doe under the

circumstances, takes an appeal from the findings of the Commission direct to the Circuit Court of Appeal for his particular circuit. That is the Court in the United States under our Federal Judicial system that lies between the Trial Court and the Supreme Court of the United States.

There the Circuit Court reviews the matter de novo and if they agree then the judgment is entered.

Of course John Doe again can appeal to the Supreme Court from that judgment and ultimately a decision is reached. Now what does that do? That is the part in that process which I have been talking about a day or two ago, for the crystalization of law and practices so that men might know in advance whether or not the things they contemplate doing would or would not violate the law but that process has been slow, it has been very slow, the Federal Trade Commission recognized that it was a slow and an all too slow process, so in due course, about 1919, they evolved the practice of holding what they called "trade practices conferences". A conference of that kind is called as a result of the receipt of a multitude of complaints respecting a particular industry and when that trade practices conference is called notice is sent out to every unit of that particular industry. A Hearing is held. An effort is made in that way to evolve codes of ethics, rules of competition if you please, quickly, more quickly. An effort to speed up this crystalization of the process I was talking about, but, but, and here is the

rub, here is the rub, is that kind of effort, whether or not sanctioned by a body of the Government, a reasonable or an unreasonable restraint under your anti-trust law, in the United States, the Sherman Act, in Canada under the Combines Act.

It is a question now before the Court. It has never been solved.

You still have the impediment of your Combines Act and the fear arising from the prohibition stated in an obscure way, of unreasonable restraints of trade that prohibits or that keeps men from taking an appropriate co-operative action when it is required. Now we have, as I pointed out just before the Commission rose, another experience of that kind; the National Industrial Recovery Act and I pointed out to you that although the administrative authorities under that Act were supposed to be consultative in character, it did not turn out that way. It did not turn out that way. Now you saw Dr. Frey here. Dr. Frey is an extremely sensible fellow, an extremely sensible fellow but what did he say about that code? Why, ordinarily the man in a Board of that kind would rather do nothing than to assume responsibility for action. Now that was one of his reasons for not wanting to have any kind of directional powers in the Governmental Board.

Now we get along a little further. A Board that really did not have any of the authority that the Petroleum Administrative Board actually seized and employed, points out to me anyway a danger in having a separate distinct agency of that character. Those

[illegible] kind of effort, whether or [illegible] government, a procurement [illegible] under your anti-trust laws, [illegible] Act, in Canada under [illegible] Act.

It is [illegible]

[illegible]. It has never been [illegible].

[illegible] have the judgment [illegible] Combines Act and the [illegible] resulting from the [illegible] stated in an obscure way, [illegible] unreasonable [illegible] of cases that prohibits or that keeps man from taking an appropriate co-operative action when it is [illegible]. For we have, as I pointed out just before the [illegible] dissolution case, another expression of that kind; the [illegible] Commercial Income [illegible] pointed out to [illegible] although the [illegible] authorities [illegible] Act were supposed to [illegible] relatively in character, [illegible] turn out that way. It did not turn out that way. [illegible] Mr. Chairman, [illegible] very [illegible]. Mr. Chairman is an extremely [illegible] fellow, an extremely [illegible] fellow but when [illegible] [illegible] that under any circumstances [illegible] there kind would rather do not [illegible] to assume [illegible] responsibility for action. [illegible] of his [illegible] to have any kind of [illegible] [illegible] the Governmental Board.

[illegible]

[illegible] found that really did not [illegible] any [illegible] [illegible] the Petroleum [illegible] [illegible] [illegible], relate out [illegible] [illegible] a [illegible] different [illegible]

agencies do not like the idea of having no authority to do things, and the first thing you know, whether they have it or not they take it and you have a collapse of the system but even so, even so, you still have outstanding the one big impediment to a proper co-operative action, namely the Combines Act and the psychology of business men in respect of that Act.

Now you simply have to go back to the source of the obstruction. My suggestion this morning was this - under the creation of a Board and with power to do nothing, I think that would be unwise, we have found that to be the case and I stated the reasons for that,- the simple expediency of doing a simple thing and thus removing the one impediment to co-operative action, is an express amendment to the Combines Act which will expressly permit of the taking of co-operative action when and as and if the industry believes that such action is necessary to cure the conditions that confront it, and get a judicial declaration in advance that the kind of co-operative action which they want to take is proper under that law.

Now unless you approach it from that direction I am just as positive as I stand here, that you simply are not going to get rid of the vices of competition, not for a minute, as long as you have that impediment outstanding against it.

THE CHAIRMAN: All right. Granted the removal of the impediment, do you depart from the view that you seldom get agreement amongst competitors.

MR. RAY: No, I do not depart from that. Let us remove the impediment and then we have this----

THE CHAIRMAN: The further impediment that an unscrupulous competitor will not agree.

MR. RAY: That is quite right and I was going to get to that this afternoon but I have not yet quite got to it.

Of course another one of the things which we learned under the system of the National Industrial Recovery Act was that when you have rules that the unscrupulous will not obey, that those rules bear very heavily upon the obedient. Now there is no question about that and that is a very great big problem, how to get at it.

THE CHAIRMAN: You should not make any rules if you are not prepared to see that they are carried out.

MR. RAY: So it seems to me that this is a possible suggestion that when an industry, particularly when the overwhelming majority in the industry are willing to take a course for the correction of an evil and that large majority agrees, then the agreement should be for the time that it is in effect a rule of competition for that industry and if a particular unscrupulous competitor, as you say, will not obey these rules, these rules nevertheless are a standard by which the conduct of the people in competition can be judged and you have a definite, specific standard so that

your government in the enforcement of these rules can very well say "Now you either obey or we are going to prosecute you for the use of competitive abuses", and I think that that is about as sound a position as you can take. I do not know of any better method anywhere in the world that we could get to it in a hurry, that would be a better way and that is the thing we are after.

THE CHAIRMAN: The thing remains yet, that from the beginning to the end of the Commission in its long sittings we have invited the industry or their representatives appearing before us to put forward any suggestions that would be for the benefit of the industry when translated into regulation or enactment or anything of that sort, anything that the Government of this country could do that would be to the advantage of the industry as a whole. Now there is no fear of prosecution attached to their presenting to this Commission any single regulation or any single law that would benefit the industry. We asked that we be told about it, and we are concluding this Commission without a single suggestion from any company.

MR. RAY: Well I just made one, I have just made one. I think that this Commission, and I am going to give you some more.

THE CHAIRMAN: What is the regulation or law which you suggest.

MR. RAY: Well I suggest the competitive system as such in its power of regulation is the best regulator you can have but you must have in this country, and every country for that matter, a recognition of appropriate

co-operative action. Now nobody can tell you what that co-operative action should encompass. It should encompass the abuses as they arise. Now I think in most---

THE CHAIRMAN: If you can make an agreement with each other, why carnot you each tell us what you think should be done.

MR. RAY: what we agree about.

THE CHAIRMAN: Yes, quite so, name your abuses and your proposed agreement to remove them.

MR. RAY: Now those things are flexible. They are not always things you can specify. I think long since our laws would have had a particular bill of particulars---

THE CHAIRMAN: If you can make agreements, you would have to specify them.

MR. RAY: Undoubtedly, and it would be the result of a comprehensive study of the situation as we find it. I can tell you what have been in the codes in the past. There have been a lot of them, some wise and some unwise, and we have learned a lot of things but I can openly speculate about it.

THE CHAIRMAN: Perhaps codes are not desirable, I do not know what conclusions we will come to or what conclusions we will state, but we have certainly invited the industry to tell us what they thought.

MR. FRAWLEY: What makes the code, it is completely beyond me, my friend speaks about something upon which to found a prosecution, now who would prosecute and for what, and the violation of what law.

MR. RAY: Well now here is the anti-trust system in your country.

MR. FRAWLEY: Yes.

MR. RAY: Your anti-trust system as it is today prohibits combination.

MR. FRAWLEY: In detriment to the public.

MR. RAY: That is right. Now what is in detriment to the public? A business man does not know in advance what the Government will say about that. Now all that I have suggested is that that law be amended to have a decision in advance of action rather than subsequent to action as to whether a contemplated co-operative action is proper or improper. Now to illustrate I will give you a specific simple example----

MAJOR LIPSETT: Is your suggestion anything more than this that by agreement the company should be allowed to make, notwithstanding the law, to make a monopolistic trust subject to getting that sanctioned by some directional body.

MR. RAY: Not at all. Let me give you a specific case. I can illustrate this to you very well. In the United States the coal industry found itself constantly unprofitable. Now what to do was a very great problem, so that representatives of the industry sat down and they came to the conclusion that distress coals, coal mined in excess of market demands, was being dumped into the market in such quantities that the prices were depressed to a level where nobody could make any money. How to cure that condition, one method that was suggested

and thereafter followed, was that the various companies should market their coal through a single agency at prices current in each market, not on an agreed price but at prices which would be the going market prices in the various districts in the United States where coal was sold.

Now coming up to that point suppose they would have gone to a Court for a declaratory judgment and said "Here, gentlemen, is what we are confronted with and here is our suggested solution. We think that this agreement is in the public interest ", and supposing that that Court had issued a declaratory judgment that that agreement was in the public interest , then that question would have been decided.

MAJOR LIPSETT: Was that not an agreement, as you put it, an agreement to eliminate competition with a view of raising prices.

MR. RAY: I am going to get to that. The answer is "no", but what actually happened, there was no method by which the coal people in the United States could go to any Court and ask for a judgment of that kind. That was not done. They went to the Department of Justice and they put their problem before them and they said "We cannot give you any advisory opinion. We have no authority to do that. That is your business," so they were very doubtful, but they were also facing absolute bankruptcy, so in that situation they decided to take a chance and put the agreement into effect whereupon the long arm of the law stepped in and prosecuted them under the anti-trust law, in a case that went to the Supreme

[illegible] thing [illegible] followed, was that the [illegible] companies [illegible] their [illegible] issue at [illegible] market, [illegible] agreed price but at [illegible] market prices in the [illegible] United States where coal was [illegible]

[illegible] to that point [illegible] they would have gone to a [illegible] there, gentlemen, is what we [illegible] suggested solution. We [illegible] in the public interest", [illegible] that [illegible] mandatory injunction [illegible] in the public interest, then that [illegible] would never [illegible]

MR. [illegible]: As that [illegible] agreement, [illegible] it, an agreement to eliminate competition [illegible] fixing prices [illegible]

MR. [illegible]: I [illegible] to that. The answer [illegible], but what actually happened, there was [illegible] method by which [illegible] United States [illegible] to [illegible] that [illegible] this was not done, [illegible] Department of Justice [illegible] they [illegible] them and they said "We cannot give you [illegible] opinion. We have no authority to do that. [illegible] business," [illegible] they [illegible] very doubtful, [illegible] acting [illegible], so [illegible] there [illegible] the law [illegible] law, [illegible]

Court finally of the United States, and in that Court a decision was rendered that this was not an agreement contrary to the public interest , that it was not a monopolistic agreement, that it was not an agreement to fix prices but that it was an agreement for the purpose of controlling a distress product, a product that had turned out to be a competitive abuse and which was creating a situation in that industry that was detrimental to the entire economy. Now we do not know when those conditions are going to arise like that. You cannot state in advance, state any specific set of rules to take care of it. Do you think that the petroleum industry could possibly have by any way on the face of the earth determined in advance how it was going to take care of the price war condition all through the middle West during the NRA? It was utterly impossible and that illustrates another point of mine; Dr. Frey told you about how he had on many occasions sat in with industry and had tried to solve some of the conditions, the economic dislocations, which arose through price wars. I want to trace that, if I may, I want to mention this, because this matter is still involved in the courts down there, and here is what happened;the industry had a code; the code was not ten days' old, it became effective on the 2nd day of September, 1933 and on the 13th day of September 1933 it was universally amended. We did not think that amendments of that character were proper, the industry did not, but they nevertheless were made. That was step one, and then from that day until July of 1934 that code went through a series of constant changes, changes, in an effort to do

what? In an effort to restore the industry to balance. It was in distress. There was no question about it, but it was being done, it was being done more by direction than by co-operation. Along in the middle of 1933 a price war condition resulted from the flow of East Texas gasoline into the markets all over that country, just simply knocking prices clear down to the bottom. Everybody was in terrible distress. Well now what happened? What happened? The administration, this consultative Board we are talking about, sent two emissaries to the marketing committee of the industry. Those two men stated to the marketing committee "The Government has done all that they can do. We have tried everything we know how. Now it is up to you gentlemen to carry the ball and see if you can straighten out conditions." Now one of the men of that marketing committee said "Now wait a minute, you are telling us to go out and try and take care of a specific price condition. We understand that the law prohibits anything of that kind." "Nevertheless you go out", and on the 21st day of July 1934 the Secretary of the Interior in charge of the petroleum industry mailed a letter to the Chairman of that marketing committee requesting and directing that he take action to stabilize prices in the petroleum industry. Well you know the result. He did it. He did what he could, as soon as that Checker Board decision was out of the way, with the result that a great many people were indicted and prosecuted. Now that is the way these things work. You should have it seems to me some kind of a broad generalized statement incorporated in the law, and the first

generalization is this "Combinations in restraint of trade are hereby prohibited if contrary to the public interest ".

The second generalization "Providing however that co-operative action which is taken in the public interest is not prohibited", and then provide that the industry concerned with the necessity of taking co-operative action may submit in advance before a long and harassing trial, to determine whether or not they have violated the law, get a judgment of some kind of an agency, preferably in my estimation the Court, and I say the Court for this reason that there is not any other tribunal of which I have ever had any experience that has anything like the training to give such a problem an objective and impartial and unbiased study. Now that is my position. I may be entirely wrong but I want you to understand how I feel about this and I think too that, I just simply do not care what is done in this Province but I do prophesy that if you do take action without coupling it with the suggestion which I have made, anything you do is not going to work and what we are looking for here, if I understand it correctly, is a pragmatic technique, something which will work. I would like to class---

MAJOR LIPSETT: Mr. Ray, may I put this question again, to you, the concrete case which your own company is interested in, before you get to this body that you visualize, you have to get an agreement.

MR. RAY: Yes.

MAJOR LIPSETT: Now how would you get an agree-

ment in this case, for instance, if the other jobbers in this Province who are working on a spread of 6 or 7 cents a gallon were to go to you and say "Well it is ridiculous," you undercut them to the extent that you are handling this marketing on 3¼ cents a gallon and it is costing them a cent or 2 cents more. You say you cannot get any bigger spread and compete in the market and therefore you will not agree. Now what, under your set-up, how would you get a dispute like that dealt with or considered.

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MR. RAY: Well now, I still do not see where a spread of 6 cents for other jobbers and one that you say is 3 cents for Texas is quite an accurate statement of the facts. I thought I had straightened that out yesterday. Apparently I did not or apparently I did not understand the question, one or the other. Here your spread, as far as the Texas Company is concerned, is computed, if I understand the case correctly, by taking the laid down price in Calgary.

MR. FRAWLEY: 12.9 cents.

MR. COMMISSIONER LIPSETT: Yes.

MR. RAY: And subtracting that from the tank waggon price in Calgary, above which we cannot go. Now, let us do what I think we ought to do.

MR. COMMISSIONER LIPSETT: Just visualize now that as a correct statement of the facts at Calgary, and a Calgary jobber wanting to get a 7 cent spread as necessary for his business.

MR. RAY: A margin of 7 cents.

MR. COMMISSIONER LIPSETT: A margin of 7 cents that he says is necessary as against your 3 cents or more. How are you going to get an agreement?

MR. RAY: And everybody is going to do business on a 7 cent margin basis. In the first place-----

MR. COMMISSIONER LIPSETT: I am putting it to you first of all, how are you going to get an agreement as between those two jobbers and secondly, in the absence of an agreement what Board, in your opinion, should be set up to deal with that dispute so that fair play should be given to everybody?

MR. RAY: First of all your question in that situation, as I see it, would be whether or not the

fixation of margins under which all competitors in the market could operate should be uniform. That is the question. Where is that question going to be resolved? Let us say there are 7 competitors in the market and 6 of the 7 are in agreement and that it is an agreement in the public interest. The seventh, including me, takes the position that it is not.

MR. COMMISSIONER LIPSETT: And it is going to put you out of the market if it is enforced.

MR. RAY: And we leave that to the Courts to decide, whether or not that kind of an agreement is in the public interest. This would be the procedure. The proponents of that agreement, in my suggestion, carry the burden of proof, to prove that the agreement is in the public interest. They endeavour to do that. Now, I am on the other side of that fence and we fight it out and then the tribunal issues a judgment, such as it does in any case, and if it is an agreement in the public interest-----

THE CHAIRMAN: It has not in any case of which I have ever heard passed on business methods.

MR. RAY: I did not want to go into the merits of the suggestion. I took the suggestion that was given to me.

MR. COMMISSIONER LIPSETT: Does it not come to this----

MR. RAY: Personally, I think this situation is one better solved wby competition than by agreement.

MR. COMMISSIONER LIPSETT: Does it not come to this, that if that question is to be decided in any way it must be done by some body that has experience and knowledge of the subject and is able to give a decision?

MR. RAY: I have never seen in my life any

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better approach to questions that are subject to dispute than the tribunals already organized for that purpose as given to these questions.

MR. COMMISSIONER LIPSETT: Tribunals already organized have no jurisdiction over a dispute of that sort at all.

MR. RAY: We are going to give it to them.

MR. COMMISSIONER LIPSETT: Unless you set up a special jurisdiction for that purpose.

MR. RAY: That is what I am saying and all I am suggesting.

MR. COMMISSIONER LIPSETT: Are you in agreement with this then, that apart from an agreement some tribunal, be it the Courts or be it a Board, should be set up with power to decide in a case of that sort?

MR. RAY: And that is all the power I would give them. I think so. I think that and absolutely would not go one step beyond the power to say Yes or No. That would be the end of it.

MR. COMMISSIONER LIPSETT: Let us pursue that. Whether it is a Court or a Board, in the event of a dispute as between the other 6 jobbers and yourself, you feel one of those two bodies should have the power to give a decision either for you or against you, on this dispute as to the spread?

MR. RAY: I do not think any agreement of that kind would ever get to any tribunal, of that particular type.

MR. COMMISSIONER LIPSETT: On your theory that partidular type of question could not be decided at all?

MR. RAY: It could be decided. The Court would very likely say the agreement is not in the

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public interest.

MR. COMMISSIONER LIPSETT: There is no agreement in this hypothetical case.

MR. RAY: Among the 6 there is.

MR. COMMISSIONER LIPSETT: It is not an agreement in the industry.

MR. RAY: You do not have to have an agreement among all in the industry to carry this thing into effect, as I see it. What we are really doing here is really highlighting in the most effective way I know, the difficulty of trying to have anybody determine in advance what industry should do. We have all of these facts that would have to be brought to bear on this question before it is solved.

MR. COMMISSIONER LIPSETT: I am trying to get and test your views about your own suggestion, Mr. Ray, as far as I can. Now, supposing that instead of it being 6 jobbers that want to go before some body that it is you that wants to go and say that it is unreasonable for them to get so much and that you want a tribunal or somebody else to decide and consider your grievance that your spread is right and theirs is too much. There does not need to be any agreement to bring that sort of an application because there is only one person. Would there be power to bring that?

MR. RAY: Not at all. Let us go back to my last point. I said what we need is to develop a technique for combining cooperation and its virtues with the virtues of competition.

MR. COMMISSIONER LIPSETT: What does that mean in fact?

MR. RAY: There is not any combination

here. We are not trying to bring any combined activity to bear on the problem when one person is inactive. You would not have anything of that kind?

MR. COMMISSIONER LIPSETT: Is your proposal then merely that companies, if they get together, can avoid the anti-trust or combination laws if they agree to do it and can get some tribunal to say it is all right?

MR. RAY: Did you say violate?

MR. COMMISSIONER LIPSETT: No, but that they can combine.

MR. RAY: They can now. The only difficulty is you get the judgment after it is done. It would not be a violation if your tribunal said there is no violation. If the agreement is to public interest there is no violation.

MR. COMMISSIONER LIPSETT: You have to get the sanction of some tribunal to say that?

MR. RAY: Certainly.

MR. COMMISSIONER LIPSETT: Is that all your proposal means?

MR. RAY: That is precisely all it means.

MR. COMMISSIONER LIPSETT: Is there any right in the consumer who might have a grievance or a non-agreeing competitor who may think he had a grievance - he has no remedy whatever under your theory?

MR. RAY: He has at the present itime.

MR. COMMISSIONER LIPSETT: What is the consumer's remedy at the present time?

MR. RAY: The consumer's remedy is, if this investigation is any criterion and if it is really the result of a consumer outcry, he is right here. Here we

are and we have been here a year.

MR. COMMISSIONER LIPSETT: If that is the remedy should not the recommendations of a tribunal such as this be enforced, even to the extent of setting up somebody who can decide on the merits of a particular question as between the consumers and the companies?

MR. RAY: That is what you are going to do here. You are going to decide the merits of the industry's performance. I understand that is your function.

MR. COMMISSIONER LIPSETT: And supposing that we decide that there is something wrong - and I am not suggesting it - but supposing that we decided there was something wrong in the treatment of the consumers; should there not be power then to control the industry so as to put that right?

MR. RAY: I do not think that there should ever be any Board regulating this industry for the reasons I have already stated.

MR. COMMISSIONER LIPSETT: At the present time, if this Commission's recommendation, if it be regulatory, should it be enforced?

MR. RAY: No, it should not. You are making a serious mistake if you recommended a Board, an extremely serious mistake. That is a regulatory Board.

MR. COMMISSIONER LIPSETT: What would you suggest should be done on the assumption that this Commission finds some particular thing wrong with the industry, should that be put right by legislation or compulsion or should it simply be a pious hope?

MR. RAY: I think the only thing you possibly could find on this record would be that your

G. W. Ray.

Combination Act needs amendment to permit of the taking of cooperative action when necessary; and on this record,. and that is what I have been discussing for three days, you will have to find, as I see it, that competition has in this industry performed for the public welfare all through and through.

MR. COMMISSIONER LIPSETT: That is on the facts, on the merits. Not on the power,which is a different thing. Supposing on the assumption there is something found that needs amending. Assume that.

MR. RAY: For example?

MR. COMMISSIONER LIPSETT: Assume there is something. Assume we find the other jobbers are getting too much, if you like, is there to be any power at all in any body to protect the public as against the 7 cent spread if you can do it at 3 cents, for instance?

MR. RAY: Are you asking me whether or not a body should be organized for the purpose of fixing prices at a lower level than now exists?

MR. COMMISSIONER LIPSETT: No, I am trying on the basis of your suggestion to see whether it would lead anywhere or give any protection to the public.

MR. RAY: If you are asking me whether any body, any regulatory body should be organized to authorize fixed prices, even assuming that you think they are too high, my answer to that is unqualifiedly no. I certainly do not think so.

MR. COMMISSIONER LIPSETT: Then your suggestion boils down to this, that it is a method to enable companies to combine if they can get some body to approve of the combination.

MR. RAY: If they can get a government

representative who is supposed to exercise his authority always in the public interest to say that this action is in the public interest; or to say this action is not in the public interest and consequently you cannot do it.

MR. COMMISSIONER LIPSETT: And your view is that nobody should have any power to protect the public or protect the dissenting refiner or dissenting marketer?

MR. RAY: That is precisely what I mean, with this qualification , that you have already all of the forces at work which do a better job than any government body could ever do and those are the forces of competition.

THE CHAIRMAN: Well, Mr. Ray, the industry did not make a very good job of conservation. Nobody has suggested that there is a breach of the anti-trust law there. Just plain human greed that is common to all of us, I expect, in this world, that stood in the way until there was government intervention and statutory enactments.

MR. RAY: May I give you the history of those laws?

THE CHAIRMAN: You may. I have read a good deal about them already.

MR. RAY: First of all, industry did a great deal for conservation. It developed the several techniques I was telling you about yesterday, which had conservation results. It also developed techniques which increased the yields of products from crude charged to stills. That was a conservation measure. Now, when things get out of hand - but I think I have got to go back a bit. Let us go back to the last war. The United States at the end of that war was actually faced with a shortage. We had gasolineless

Sundays in the United States. That condition continued until along in the early '20's, that is this possibility of shortage of crude. Conservation was not so much thought of then as was the question of getting enough oil to meet the demand, this constantly increasing demand. In either 1920 or 1922 oil was discovered in California. It later was discovered in increasingly larger quantities in Oklahoma, so that by 1924 or 1925 there was a situation which actually created a problem of over-production and waste. Now, it was the industry that suggested that government correct the mistake that government had made in adopting rules of competition that were based upon fiction and not upon fact.

THE CHAIRMAN: Is it not a well known fact that the industry could not control its own members. They would not stick by the rules that some people in the industry----

MR. RAY: What were the rules. The rules were to go out and get all you can get. Not only that but "If you do not do that then I will drag you into the Courts," says Mr. Landowner, ' and make you do it." And they dragged us in.

THE CHAIRMAN: Quite so.

MR. RAY: And what could be done under those circumstances. You had to have some kind of governmental intervention. I am all in favour of it where it is necessary, definitely so, but I want it to be a certainty-----

MR. COMMISSIONER LIPSETT: When you say you are all for it when it is necessary, do you mean you are for it if the industry thinks it is necessary but not if the public thinks it is necessary?

MR. RAY: Well, I think that I have heard no particular public outcry for taking action in respect of

[illegible]

this industry. As a matter of fact, I think this industry has brought to your attention one of the most remarkable records of fine performance for the public welfare that one could expect or hope for.

MR. COMMISSIONER LIPSETT: That is again on the merits, but I am on the powers.

MR. RAY: If that is the kind of performance that is going on, why interfere? Why interfere? As I said to begin with, why all the speculation and surmise when you have this kind of meritorious fact to deal with?

MR. COMMISSIONER LIPSETT: That is assuming the facts in your favour. But, as the Chairman pointed out, this Commission was set up by a resolution of the Legislature of this Province. Now, what I am putting to you is, is it right that some body should have the power to say on the one hand that the industry has done everything possible for the Province, if that were a fact; or equally say that the industry has not done everything and the public requires certain protection, if that be a fact.

MR. RAY: You are doing that. You are actually doing that.

MR. COMMISSIONER LIPSETT: Very well. Again it comes back to what I was putting to you before, assuming we find there is something wrong with the industry, is there to be a body to put that right or not?

MR. RAY: My difficulty with your question is finding there is anything to make that assumption on.

MR. COMMISSIONER LIPSETT: You are asking me to assume first of all that everything is right with the industry.

MR. RAY: No, I do not ask you to assume

that.

MR. COMMISSIONER LIPSETT: And then making that assumption to say "Well, it is not necessary to go any further."

MR. RAY: No, I do not ask you to assume that. I do not ask you to assume that. I do ask you not to assume the contrary, in the face of the facts as they are. The facts as we have presented them here refute that assumption, as I see them.

MR. COMMISSIONER LIPSETT: If I do not assume either, do not assume either fact; either that the public has a grievance or that the companies have a grievance, is it not right then that some body should have the power to determine which is right and to enforce the determination; some body?

MR. RAY: I guess I do not understand. I attempted the other day to show there were four principles involved in government regulation. One of those was the certainty, the provable necessity for it. Now, I say that necessity does not exist, except in one very minor particular, when you look at the whole thing. It simply does not exist. Consequently, my answer to your question is a simple one, no. There should be no government regulation of this industry. Certainly there should not be. I say that with all the zeal at my command.

MR. COMMISSIONER LIPSETT: Now, take the opposite assumption, that a great many things might be wrong with the industry. What then are you going to do?

MR. RAY: Now, you are asking me to speculate, and I said when I started----- well, now, Mr. Frawley, just wait. You will have your chance.

MR. FRAWLEY: I put it to you, you must be

prepared to accept any finding of this Commission and, as I see it, the Commission is asking you to assume a finding against you. That is all, a process of reasoning.

MR. RAY: I cannot see that there can be.

MR. FRAWLEY: All right.

MR. RAY: I cannot see there can be a finding against us.

MR. COMMISSIONER LIPSETT: That comes to this, that assuming there is something found against you you have no suggestion to make at all as to a remedy.

MR. RAY: That is quite right because I cannot see what the assumption would be. One of the points that I have tried to make is this very simple fact that if as a matter of fact you could find that there was anything wrong as of the period covered by this Inquiry that that thing would better be corrected by the forces of competition and natural economy than by some extraneous force imposed by government. That is the point I am making, assuming you do find things wrong. You are going to have them rectified, very likely, very much better by competition than by force.

MR. COMMISSIONER LIPSETT: Is not the answer to that, Mr. Ray, that if we do find in fact that there was something wrong then it follows that competition has not been able in the past to put it right. Otherwise, it would not be existing to-day.

MR. RAY: If you assume that things are wrong now.

MR. COMMISSIONER LIPSETT: Yes.

MR. RAY: I told you that there were two places where that could occur. One is in the field where you have unrestricted competition under the rules of production

that existed before you had conservation statutes. Now, if your conservation programme is not working properly, you have got this first problem, as I see it, an effort to find the engineering optimum that will do the best possible job for you in a producing way. Now, that is so far as the conservation problem is concerned. On the other hand, you have the problem of the equities and the question was asked me: What are you going to do about that? Now, the ideal situation in any producing field is the one where all the equities are protected. Here is a great big problem in that respect. I do not know of any solution for it. You have first got to resolve those equities in such a way that the people who share in the avails of production also share in the risk of getting the oil from the bottom of the well to the top of the ground. Now, very often where unitization has been tried or where it has been set by law, as in our Public Land law in the United States, that an effort should be made to unitize, you run into this terrible obstacle. John Doe has an interest in the field and John Doe says "Well now, I want to get my share of this oil." "All right, John, make a contribution for the producing expense." "Oh no, I won't do that. I won't do that, or I cannot do that." Either one or the other. Now, under those circumstances you have got a problem that you cannot solve by legislation.

THE CHAIRMAN: Do you believe in conservation Boards?

MR. RAY: I do.

THE CHAIRMAN: Why?

MR. RAY: I certainly do. I think it is a very effective way to deal with a highly complicated and intricate technical problem; that as the industry moved forward

under these rules that I pointed out to you, the rules of capture and the leasing system, that things were just not right. Now, that had to be corrected. It had to be. We had to find a new technique. Now, I do not know whether it would have been necessary to correct the situation or not if back in the '90's the Courts had said that the oil is owned in place by the surface owner. Suppose they had said "Everything underneath that surface in that particular block is owned by the surface owner. He cannot get many more out. If he does he will violate the rights of his neighbour." I do not know what techniques would have been evolved by this industry if they had been faced with that situation. I have not the slightest idea. But you know that they had to get the oil to the surface. You know that you have had to do it within the limits of that kind of a law. We might not have had to have pro-ration statutes. I do not know. But that was not the situation. We have got to take into account the facts as they were and the facts as they were made it absolutely essential, in my judgment, that we have conservation boards. I do not know of any better example for the illustration of the point that those conservation statutes will work if you have the right kind of cooperation from the producers. They will and if - and this is a big one as I stated once before - you can keep political considerations out of the Board's activities. If they filter in we have trouble. The fact that conservation laws where applied have worked rather effectively - and I do not agree with the statement at all that some people make that they have not worked - they have done marvellous work. It happened because the Commissions have not responded

to political pressure and additionally because of the fact that producers honestly want to do things that will conserve the oil. Why do they? There is nothing altruistic about it. It is simply because it is in their self-interest to get as much oil out of the ground as they can get out of the ground, under pressure of the reservoir energy in the bottom of the hole.

THE CHAIRMAN: Why don't they agree among themselves. Why have a Board? Why not have an agreement?

MR. RAY: You mean without a pro-ration statute.

THE CHAIRMAN: Yes.

MR. RAY: They cannot. I will tell you why they cannot. There are larger impediments to that kind of an agreement than any anti-trust law happened to be. Suppose they tried. Here you have every landowner in the community saying to the operators "You get that oil to the surface or I am going to throw your lease out and have it rescinded, because you are not diligently operating the property." You cannot get an agreement under those circumstances. The man who has the land wants the oil at the top of the surface and forces you to go and get it there and the devil take the hindmost. That is the way that has worked out.

THE CHAIRMAN: That is so.

MR. RAY: And the Courts have said that is right. That is right and we are going to enforce that kind of a rule.

THE CHAIRMAN: That is because you made that kind of an agreement that he can say this, that is the landowner

MR. RAY: You mean the lease terms?

THE CHAIRMAN: Yes.

MR. RAY: I think there is something to that, but let us make any other kind. Let us make the other kind of agreement with the landowner. You have this tremendous expense of going out and finding oil and making a deal with the landowner and you are going to tell him "I would like to have you lease your land to me. There is not enough money in the oil companies to buy all the land. I want you to lease your land to me and I am going to put a covenant in it that I do not have to diligently produce." How many leases would you get?

(Page 16,188 follows.)

MR. RAY: As a practical matter you would not get any.

THE CHAIRMAN: Not many?

MR. RAY: I do not think you would get any.

THE CHAIRMAN: It is just one of the instances where you need to seek government intervention.

MR. RAY: I quite agree, I quite agree. I think the necessity, as I stated, goes back to one of the very basic premises of my submission, that there is a case where it is necessary for governmental action.

MAJOR LIPSETT: Was not the proof of your necessity there, Mr. Ray, that the oil companies had a grievance against the landowners? Now why should there not be government intervention of some sort if the public has a grievance against the oil companies?

MR. RAY: Well, as I stated before, I think competition works far better than a regulatory body where you have competition doing all of the things that I have already pointed out to you.

MAJOR LIPSETT: Why would not competition among the landowners, to get their land leased to a big oil company, why would that not enable you to get fair terms from the land company?

MR. RAY: Because the oil is not at the top of the ground.

MAJOR LIPSETT: It is the same.

MR. RAY: I do not think it is the same at all.

MAJOR LIPSETT: The landowner may never get his land drilled for 20 or 30 years unless he can get a strong

company to take it on.

MR. FRAWLEY: And they are strong enough.

MR. RAY: But the Court said the only fair terms, and if the covenant was not in the lease, do not forget that the courts put it in by implication. They said the only fair thing is for you to produce, diligently produce, and if you do not do it you do not have the lease.

THE CHAIRMAN: I think we understand your views.

MR. RAY: Thank you very much. I appreciate your giving me the time and the attention which you have.

THE CHAIRMAN: Is there something you ought to add?

MR. RAY: No, I think that is my submission, Mr. Chairman.

THE CHAIRMAN: Well we appreciate your coming so far, Mr. Ray, to put forward the very excellent submission which you have.

MR. RAY: Thank you.

MR. FRAWLEY: Mr. Mahaffy will follow Mr. Ray.

THE CHAIRMAN: Mr. Mahaffy speaks to a special phase of this, as I understand it?

MR. FRAWLEY: Yes.

THE CHAIRMAN: Why is it broken into, why not Mr. Harvie follow?

MR. FRAWLEY: In my original scheme of things, Mr. Harvie was to follow but I understand that Mr. Mahaffy and Mr. Harvie made it up between themselves.

THE CHAIRMAN: Why is that, Mr. Harvie?,

MR. HARVIE: The real reason --

THE CHAIRMAN: We are just trying to keep a proper sequence if we can. It does not matter to us which we hear first.

MR. HARVIE: I understand that Mr. Mahaffy does not expect that his presentation will take long. It is on a phase of the subject in which we are quite interested and maybe we can avoid repetition. I am prepared to go ahead but as I have already told you, I have rearranged my submission and shortened it so that as far as possible repetition might be eliminated . Up to the present time it would have been difficult for me to have gone ahead and under the circumstances Mr. Mahaffy said that he was prepared and I thought perhaps it might be better that way.

THE CHAIRMAN: All right, Mr. Mahaffy.

MR. MAHAFFY: So far as I am concerned Mr. Chairman and Mr. Commissioner, it makes no difference to me, either now or later. As Your Lordship mentioned, I am only interested in one, - perhaps I should not say interested, - I am only going to speak to one particular phase of the matters which are before the Commission.

The Company I represent, the Gas & Oil Products Limited, is, of course, interested in the other phases of the work of the Commission but I am not instructed to address myself to them.

Your Lordship will remember that evidence was also given, brought by us, with respect to this particular point, with the co-operation of Mr. Frawley, and that point is the effect which the operations of the Oil & Gas

Conservation Board have had on the production of natural gasoline and the effect which the suggested orders of the Board would have on that production and the importance of natural gasoline to the industry as a whole and to Gas & Oil Products Limited in particular.

Now, sir, I have reduced my submission to writing and in my summary of the evidence, which I would like to go over very briefly with you, I have in that brief noted the pages from which I took the statements of fact which I have put down and I would be glad to hand copies of that brief to the Commission for your use, and if that is done I will not bother to mention the page numbers or anything of that sort as I go through this presentation.

THE CHAIRMAN: All right. You have them noted in the brief you are filing, have you?

MR. MAHAFFY: Yes, I have, My Lord.

Mr. Mayland, President of Gas & Oil Products, gave evidence before the Commission towards the end of the sittings on this particular point (P.15580 - 15586) and that evidence is found at the pages mentioned in my brief.

He very briefly outlined the history of the operations of this company in the Turner Valley Field. He pointed out that independent companies with which he was associated, commenced operations in the extreme, in the then extreme south end of Turner Valley during the years 1929 and 1930 and the drilling of the wells in that location, these wells proved to be gas and naphtha producers. (P.15549).

Now it should be noted that the first crude well was brought into production in 1936 so that,

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as Your Lorship knows, all this development of which I speak, took place many years before that.

Mr. Mayland endeavored to have the tail gas discharged from the separators at these wells processed by the Royalite Oil Company Limited through its absorption plant in Turner Valley but he was not able to come to any arrangement with that company for the processing of gas. At that time the Royalite Oil Company operated the only absorption plant in the Turner Valley field. (P.15552) I may say, sir, that I do not think it is necessary, after the Commission has heard the evidence, for me to explain to you in any way what I mean by an "absorption plant". I think perhaps that is something that does not need to be repeated.

Now as a result of the fact that there was no places available at which this gas could be processed Mr. Mayland then organized the Gas & Oil Products Limited and he purchased an absorption plant in the United States (P.15552) and he brought it to Turner Valley and erected it at a cost which he said was approximately $460,000.00. (P.15554).

I would like to remind the Commission for the purposes of this argument that the wells of which I have spoken, drilled back in 1929 and 1930, were drilled on leases from the Crown. At that time the property, of course, was owned by the Dominion Government and those leases from the Crown gave the lessees full right to develop these properties and to take the production from those properties. The companies with which Mr. Mayland was associated ---

THE CHAIRMAN: Surely you go further. They required you to drill within a certain time, did they not?

MR. MAHAFFY: They did and they did not, sir. The documents themselves, I mean, I think it is only fair to put it this way and I do not say that they actually required it for this reason, the leases did contain drilling committments.

THE CHAIRMAN: Oh, yes, on pain of cancellation.

MR. MAHAFFY. Yes, on pain of cancellation but it must be admitted that, providing the cash rentals were paid yearly, that we do not know, at least I do not know of any case where the Dominion Government ever cancelled a lease because of failure to drill but the power, as Your Lordship says, was there and might have been exercised.

THE CHAIRMAN: Well, you could only fail to drill by breach of contract.

MR. MAHAFFY: That is right, sir, and of course the fact that that breach was waived by the Government was no guarantee that they would continue to do so, to wink their eyes, so to speak, at the breach of their contract.

MAJOR LIPSETT: Was there a positive covenant to drill or was it merely if you did not drill it would be cancelled?

MR. MAHAFFY: The effect was to give a right of cancellation.

MAJOR LIPSETT: There was no actual, positive contract that you would drill any particular number of wells?

MR. MAHAFFY: No, that is I can say that is not the covenant which I think you are thinking of. The only power to the Government, reserved by the Government was that if drilling was not done then they had the right to cancel the lease.

MAJOR LIPSETT: I see.

MR. MAHAFFY: Now when this company took these leases and proceeded with this development, they naturally assumed that they would be allowed, in fact as we have said, that they would be expected to develop this property and operate these wells without restriction, save such restrictions as might be contained in the leases themselves, and on that basis they proceeded to invest very substantial sums of money in the development of this property.

Moreover, prior to the erection of this absorption plant in 1934 Mr. Mayland gave evidence that he had received assurance from the Provincial Government, which had then taken over the resources from the Dominion, that these wells would be allowed to produce up to 40% of their open flow capacity. (P.15553). Now it was under those conditions that he purchased and erected this plant and when the plant commenced operations in the year 1934 the throughput of gas was approximately 54 million cubic feet per day. (Boyd P.15516.). The plant incidentally had a capacity of 60 million cubic feet a day (P.15539), although Mr. Boyd said it could take up probably to about 80 million cubic feet per day.

Now after the plant was completed and started operations Mr. Mayland gave evidence that he could not make any satisfactory arrangement with Imperial Oil Limited to dispose of the natural gasoline produced in the new plant. (P.15554). Imperial Oil Limited at that time was the only refinery of any substantial standing that handled any quantity, any reasonable quantity, and since he could not dispose of this new product to them he found it

necessary to commence the production of a third structure gasoline. (P.15555) and he found it necessary to get out and market that product. Up until that time Gas & Oil Products Limited, of course, had not been in the marketing end of the business in any way shape or form except that naphtha had been sold at the field to farmers and so on, who might come to the well.

This natural gasoline which Mr. Boyd described rather fully in the evidence made it possible for this plant to produce a very fine third structure gasoline and the sales organization of the company was built up around that particular product.

The evidence discloses that very substantial reductions in the price paid by consumers for third structure gasoline resulted from the entry into the market of this product. (P.15558). We have heard a lot about competition and here is one case where a competitor entered the market and if I may say so, our suggestion is that the operation, the suggested operations of my friend to my left, is trying hard, probably not intentionally, to eliminate that competitor from the market.

Mr. Mayland expressed the very definite opinion that this entry into the market could not possibly have been made by him, by his company, without the use of the natural gasoline produced at that plant. (P.15552). He stated further that the ability of his company to remain in the market in competition with the major companies can be attributed to the use of this product. (P.15552). The evidence of both Mr. Mayland and Mr. Boyd is very definite that if this company is not allowed to produce its requirements

[illegible]

of natural gasoline it will find it extremely difficult to maintain its position as a competitor in the manufacture and distribution of gasoline.

Mr. Boyd, superintendent of the plant, has had a great deal of practical experience, as his qualifications showed, both in Canada and in the United States, and he gave evidence to establish the importance of natural gasoline as a blending agent in the manufacture of gasoline. He emphasized the importance of an adequate volatility in gasoline. (P.15459 & P.15473).

THE CHAIRMAN: In making his calculations for some substitute plant in connection with the Imperial Oil, Dr. Brown's evidence is that he allowed 5% natural gasoline, did you see that?

MR. MAHAFFY: Yes, I did, sir.

THE CHAIRMAN: That is in evidence which you may see in the correspondence to be filed. That does not stack up with your 18% testified to by Mr. Boyd, does it?

MR. MAHAFFY: There is quite a discrepancy, sir, in those percentages. Unfortunately Dr. Brown has never inspected our plant. We do not know what the new Imperial Plant is and it is rather difficult for us to draw any comparisons.

THE CHAIRMAN: No, but it was suggested to Dr. Brown by me before he went away that since we had to consider this from every point of view that he tell us not only what his findings were with respect to the Imperial plant as it was in 1936, the Imperial Plant as it probably would be when construction was completed, - and which was not at that time, - and furthermore that he give us the results of his

computations with regard to a new plant that he would set up and it is with respect to the latter, as I recall, that he said he would allow 5% natural gasoline; am I right?

MR. FRAWLEY: That is quite right.

THE CHAIRMAN: And when reading that evidence some time ago but since you and I last met here, I was struck by the fact that he made an allowance of 5%, while Mr. Boyd rather stressed the fact that he would require 18%.

MR. MAHAFFY: Of course it must be remembered, sir, that as I understand the 5%, that is a year round average and Mr. Boyd's figure of 18%, as I remember, was for winter use

THE CHAIRMAN: Well we might look at that evidence That may be the answer, Mr. Mahaffy.

MR. MAHAFFY: As I understand Dr. Brown's figure of 5%, that is the year round average figure, is it not Mr. Frawley?

MR. FRAWLEY: Well I suppose that is a fair inference, he just simply says "5%".

MR. MAHAFFY: Now in the summer-time ---

THE CHAIRMAN: I think your answer is probably a good one, Mr. Mahaffy.

MR. MAHAFFY: Well in the summer --

THE CHAIRMAN: And it may meet the difficulties that I have been experiencing in making those two figures jibe.

MR. MAHAFFY: I do not know that they will ever jibe exactly, but that causes the greatest part of the discrepancy, the apparent discrepancy in those figures.

THE CHAIRMAN: Now you say Mr. Boyd's evidence is relating to the winter?

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MR. MAHAFFY: I am quite sure, yes, that the 18%, the 18% referred to the blending with the cracked product. We have used more than that in some of the other products but the 18% was the cracked product for winter use.

THE CHAIRMAN: Now does he say that?

MR. MAHAFFY: Yes. I have not checked that from the transcript of the evidence, sir, but I will do that.

THE CHAIRMAN: I thought, like Dr. Brown, he just said it took 18%.

MR. MAHAFFY: No, I am quite sure that is not so but I will check that up.

THE CHAIRMAN: Well you might bring both to our attention. You undoubtedly will do that say in the morning, Mr. Mahaffy. I do not just recall the volume and page but I know Dr. Brown mentioned 5% and I know your man mentioned 18% and perhaps Dr. Brown, - in fact I think that is a fair inference that you put to us, he must have meant on the average the year round and equally I do not recall Mr. Boyd specifying that it was for winter use that he was going to have 18%.

MR. FRAWLEY: That is the 18%, comparing that, well perhaps 18% and Dr. Brown's 5?

THE CHAIRMAN: It is according to what their evidence is. If Boyd limited it to winter that is another matter.

MR. MAHAFFY: I will check that to the exact page, sir.

THE CHAIRMAN: Very good and report back on that.

MR. MAHAFFY: But there was no discrepancy in what I was going to mention, sir, I have not come to the percentages yet in the way I have worked this out, is that

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volatility is essential in a gasoline and Mr. Boyd handed to the Commission a copy of a book written by this same Dr. Brown, which is a treatise emphasizing the importance of volatility in a gasoline to be used by the general public and that book as I say has been filed and I gave you the references ---

THE CHAIRMAN: Now how are you getting along, Mr. Mahaffy, with the correspondence with Dr. Brown. It would have been much more satisfactory if it were closed up before now and we had it so that you could address yourself to it. Do you know where it is at?

MR. MAHAFFY: Well, sir, I received another letter.

THE CHAIRMAN: Mr. Frawley has just gone out but perhaps you can tell us, although Mr. Frawley may know more about it than you do.

MR. MAHAFFY: Well, there has been correspondence changing hands and whether there is any object in pursuing it further, at least from my point of view I do not know and I have not, during the past three or four days, pursued it any further because I found it most difficult to probably get at certain details of the situation when, as I say, Dr. Brown knows nothing about our plant and when we have no chance of discussing the thing with him but I am quite prepared to accede to Dr. Brown's view that sufficient volatility can be secured without the use of natural gasoline if it has to be done.

THE CHAIRMAN: At a price.

MR. MAHAFFY: At a price and I am going to base my argument, sir, on that. Excuse me just a moment, sir, Mr. Nolan has handed me some evidence.

MR. NOLAN: I was just pointing out to my learned friend what the percentages were that were mentioned.

MR. MAHAFFY: Yes, on Page 15,542 starting at the bottom, sir.

THE CHAIRMAN: Volume?

MR. MAHAFFY: Volume No. 139. I think there is another reference to those percentages and I will check that up too but in this case:

"THE CHAIRMAN: Mr. Frawley wants to know your "proportion, if you need that much gasoline how much "crude do you use?

"MR. FRAWLEY: Yes, suppose we wanted to send "it down to Dr. Brown to check up and advise the "Commission whether or not that seems to be a reasonable "requirement?

"A On the third grade structure gasoline I would say "we use an average of 25 or 30%. 25 to 30% on the "average but we use more in the winter time.

"Q 25 or 30% that is for third structure and tractor "gasoline?

"A Yes.

"Q And for your Q, about what percentage?

"A 18% at present.

"Q And your Ethyl?

"A Approximately the same."

Now, sir, that does not help an awful lot on the year round proposition but I think there is something else.

MAJOR LIPSETT: He says there "at present".

MR. MAHAFFY: At present.

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MAJOR LIPSETT: You will remember at the time Mr. Boyd was speaking ---

THE CHAIRMAN: It was cold weather.

MR. MAHAFFY: And at the time Mr. Boyd was speaking the plan was this, the cracking plant was just being opened that week. They had not yet turned out any commercial production; that was a matter of about two or three weeks ago but I think there is something else in the direct examination which I submitted through Mr. Boyd and I will see if I can dig that out.

Now, as I say, there seems to be no question, that is as far as Mr. Boyd's evidence is concerned, corroborated by the statements in Dr. Brown's book and I do not suppose it is open to question, that volatility is a very necessary quality in gasoline, particularly in this part of the world where we have cold, a lot of cold weather, - it is particularly essential here during the winter time if the gasoline is to be effective in starting the machine in which it is being used.

Now, in the opinion of Mr. Boyd as expressed at the hearing, this required volatility can only be satisfactorily obtained by the use of natural gasoline. (P.15468-9) That was his opinion. He pointed out that much less natural gasoline is required for blending with a cracked product than is needed in some of the other methods of manufacture but nevertheless in his opinion he still considered that it would be necessary to use natural gasoline in the production of their "Q" brand and Ethyl brand gasoline.

Now, as I mentioned a moment ago, in Dr. Brown's view that volatility could be obtained without the use of natural gasoline in the new Imperial Refinery in

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Calgary but it is only at greater expense and in any event the fact remains that Imperial has in fact a supply of natural gasoline available to it and Mr. Boyd's contention is that Gas & Oil Products Limited must also have natural gasoline to enable it to maintain a competitive position with the Imperial Oil Company Limited.

Moreover, Mr. Boyd made it clear that Gas & Oil Products Limited intends to continue the production of third structure gasoline and the tractor fuel from its skimming plant and natural gasoline is required in that operation to achieve suitable volatility of those products. (P.15468 & 15507)

Now in support of these contentions made by Boyd natural gasoline is ---

THE CHAIRMAN: Your opponents will say, of course, they have plenty of natural gasoline because they went out and paid good money for the holdings that provided them with it.

(Go to Page 16,203)

MR.MAHAFFY: I am sorry, Sir, I did not got the import of that question.

THE CHAIRMAN: I say your opponent would say that they had plenty of natural gasoline because they bought up the North end of the field.

MR. MAHAFFY: Sir, Royalite are not my opponents. I do not know of any company in this Province that won't back me up, as far as I know, in saying that we should have natural gasoline. My only opponent is my friends on the left. I have no quarrel with the Royalite Oil Company.

THE CHAIRMAN: I thought you just said a moment ago you cannot stay in the market with your competitors if they had gasoline and you had not.

MR.MAHAFFY: That is right. But that is not a quarrel between ourselves and the Royalite Oil Company. But perhaps I misunderstood the question. There is no fight on between the Royalite or the Imperial and ourselves with respect to conservation or the use of natural gasoline. What I am saying is that the suggested operations of the Conservation Board are going to result in a certain situation which will be that the Royalite and Imperial have natural gasoline available to them and we will not. Now I say that that is a situation which should not be countenanced by the Conservation Board; that they should not put us in that position. But I have no quarrel directly with the Royalite Company. I do not consider that I am opposed in interest to them in this Inquiry. Except I want to be kept in a position - at least I will put it this way, I do not want to be put in a position by government interference that I cannot maintain my competitive position with the

Imperial Oil Limited.

THE CHAIRMAN: Well all right, we will say the Royalite and the Imperial are not in any sense your opponents and, if you like, the Conservation Board is. But may they not say the reason you have not oil in the quantities you require is that you have not paid enough money for land that will provide it to you. We have made an order that applies to everybody.

MR MAHAFFY: That is right, Sir.

THE CHAIRMAN: What do you say to that?

MR.MAHAFFY: I am coming to that. What I am going to say is.....

THE CHAIRMAN: I am perhaps taking you out of your order.

MR.MAHAFFY: That is where the question of equities and practical considerations come into the picture. I am going to suggest that they should not just look at the number of acres we hold and say "This should be done and that should not be done."

THE CHAIRMAN: Quite so. That may be a very cogent argument indeed. Well, I am sorry to take you out of your order.

MR. COMMISSIONER LIPSETT: I suppose part of your answer is the one already given that you provided in your leases for the right to develop the land that you took for the purpose and that you took land sufficient for your requirements, just as other companies bought enough land for their requirements.

MR.MAHAFFY: That is right, Sir. Most of the land originally came from government leases or re from Calgary & Edmonton Company leases.

Commission [illegible] P.

Imperial Oil Limited.

THE CHAIRMAN: [illegible] all rights we will say [illegible] and the Imperial are not in any sense [illegible] [illegible], the Conservation Board is. But [illegible] reason you have not oil in the [illegible] is that you have not [illegible] money [illegible] will provide it to you. So [illegible] on [illegible] applies to everybody.

MR. [illegible]: That is right, Mr.

THE CHAIRMAN: [illegible] do you say it that?

MR. [illegible]: I am coming to [illegible].

That I am going to say.....

THE CHAIRMAN: I am [illegible] a [illegible] [illegible].

MR. [illegible]: That is where the question [illegible] [illegible] come into the picture. I [illegible] to suggest that they should not just look at the number of acres in their [illegible] "This should be done and [illegible] should not be done."

THE CHAIRMAN: [illegible] so. They may be a [illegible] and indeed. Well, I am sorry [illegible] [illegible].

MR. [illegible]: I suppose [illegible] of your [illegible] when one of my [illegible] provides in your [illegible] right to develop the land that you [illegible] [illegible] sufficient for your [illegible] [illegible] other [illegible] ought [illegible] land for [illegible].

MR. [illegible]: That is right, Mr. Most of the land [illegible] [illegible] from Calgary [illegible] [illegible].

MR. COMMISSIONER LIPSETT: In your leases that actually were from the government and then you are saying that without considering the equities that they are going back on the leases that they gave.

MR. MAHAFFY: That will be part of the argument, yes sir. But before I leave this question of natural gasoline and its importance to our operations, I would like to remind the Commission that Mr. Boyd gave details of his experience in the United States in support of his contention that natural gasoline is an important and in fact a necessary product.

THE CHAIRMAN: Excuse me. Mr. Frawley, while you were out I was asking Mr. Mahaffy what the correspondence has led to with Dr. Brown thus far. It would be of great advantage to hear Mr. Mahaffy upon that correspondence. Have we get anywhere at all?

MR. FRAWLEY: Yes, indeed. I can file what I have. I spoke to Mr. Harvie the other day and he said he thought his people would follow up some point with Dr. Brown.

THE CHAIRMAN: If we have substantially all it might be an advantage to hear Mr. Mahaffy on that very correspondence rather than to get it all after we have retired.

MR. FRAWLEY: I can put it in. Perhaps I can put it in the first thing in the morning or I can put it in right now.

THE CHAIRMAN: You have seen it, Mr. Mahaffy?

MR. MAHAFFY: Yes, I have. At least I have seen everything up to date.

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MR. FRAWLEY: Dr. Brown's copies go to Mr. Mahaffy's clients. It would only take a second to get it.

THE CHAIRMAN: Unless you are going to get anything more overnight, are you?

MR. FRAWLEY: I do not think so.

THE CHAIRMAN: Well I think we will get that in so that you can address yourself to anything that is in it, that is of interest to you or against you.

MR. MAHAFFY: Yes, very well.

THE CHAIRMAN: You see no objection, Mr. Nolan, to putting in what we have at the moment and put in anything later that we can get?

MR. NOLAN: No sir.

THE CHAIRMAN: I would like to hear Mr. Mahaffy on anything that Dr. Brown has said, as well as the rest of you. I have not seen it at all.

MR. NOLAN: I was asking Mr. Mahaffy if he had seen it. Perhaps he would like a little while to look at it.

MR.MAHAFFY: I have seen it all but I would want to have a chance to deal with it, until the morning.

THE CHAIRMAN: Well, we will put it in in the morning. I think we will stop. We have had a long day, for we old men, speaking for myself.

MR. COMMISSIONER LIPSETT: It has a number, it is Exhibit "720".

MR. NOLAN: It is going to take a few minutes to rearrange this correspondence.

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MR. FRAWLEY: I wonder if it could be done tomorrow?

THE CHAIRMAN: Yes, I think we will take that up in the morning. Then, Mr. Mahaffy, you will familiarise yourself with it, of course?

MR. MAHAFFY: Yes, I have seen it, Sir.

THE CHAIRMAN: All right.

(At this stage the Hearing was adjourned until 10.30 A.M., December 8th, 1939).

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The Province of Alberta

IN THE MATTER OF THE PUBLIC INQUIRIES ACT

—and—

IN THE MATTER OF a Commission, dated the 12th day of October, A.D. 1938, to inquire into matters connected with Petroleum and Petroleum Products

Commissioners:

The Honourable MR. JUSTICE McGILLIVRAY
(*Chairman*)

—and—

L. R. LIPSETT, ESQ.

Session:

CALGARY, Alberta DECEMBER 8th, 1939

VOLUME 146

FINAL ARGUMENT

10:30 A. M. Session,
8th December, 1939.

MR. FRAWLEY: Before Mr. Mahaffy resumes, Mr. Chairman, I would like very much to substitute a carbon copy of Exhibit "723". Quite inadvertently it was taken away by a gentleman and I assure the Commission that what I am now proposing that Mr. Cutler should mark is a carbon copy of the same Exhibit in every respect.

THE CHAIRMAN: Well it is so ordered.

(SUBSTITUTE COPY PRODUCED HERE MARKED AS EXHIBIT "723".)

MR. FRAWLEY: Then we have been talking about Mr. Justice Sedgewick's Report, rather the report of the Tariff Commission which was made in 1936, May of 1936, I think. Now we were of different minds as to whether this document was ever filed. I am satisfied now, and I think everybody agrees with me that it was never filed. Whether it should be filed or not is a question.

THE CHAIRMAN: I think it should be. What was the last Exhibit?

MR. FRAWLEY: The last Exhibit was "728".

THE CHAIRMAN: This will be Exhibit "729". How would it be described?

MR. FRAWLEY: The Report of the Tariff Board in reference No. 84 Crude Petroleum and its Derivatives.

(REPORT OF THE TARIFF BOARD NO. 84 CRUDE PETROLEUM AND ITS DERIVATIVES PRODUCED AND MARKED EXHIBIT "729".)

MR. FRAWLEY: As a matter of fact, Mr. Chairman, I induced the Government to purchase at considerable expense a transcript of this report which extended over a long period and I have that and it is available if you care to look at it.

I do not know whether you will get that far in your research of the Tariff Board.

THE CHAIRMAN: No, not in the time that we are allowing ourselves to get out the report.

MR. FRAWLEY: Well subject to the arrangement which we made some time ago that the Exhibit be given a number, Exhibit "720" was to be the complete file of correspondence with Dr. Brown arising out of my request that he give us an estimate of the increased cost and the decreased spread involved operating Imperial's new plant without casing-head, compared with the estimates which he had given us in his memorandum, Exhibit "711"; subject to that arrangement I think I might now hand to the Commission the file of correspondence as it is as of this morning. I do not think Mr. Nolan's people will have anything to add ito it.

MR. NOLAN: Did you put the letter in that I gave you?

MR. FRAWLEY: No, Mr. Nolan has asked me to add to that correspondence a copy of a letter from Mr. McCloskey of the Imperial to Dr. Brown and which is referred to in one of Dr. Brown's letters.

MR. NOLAN: It simply completes the correspondence.

MR. FRAWLEY: Yes. A copy of a letter from Mr. McCloskey to Dr. Brown. I just want to get it in its proper place.

THE CHAIRMAN: It will go in ahead of the letter to which Dr. Brown refers to it, I presume.

MR. FRAWLEY: Yes, and then there only remains Mr. Harvie's people and they may have something to add to it but certainly I am anxious that Mr. Mahaffy should have it

because we are now dealing with it.

THE CHAIRMAN: Yes. Have you read that correspondence, Mr. Mahaffy?

MR. MAHAFFY: Yes, I have sir, and I was going to ask the Commission the same question, I do not know whether you have had an opportunity of reading it or not.

THE CHAIRMAN: No, but we will have that opportunity and any comments you have to make on it you might make them.

MR. MAHAFFY: I was just wondering, sir, whether you would prefer to read it or have me read it to you before I did comment on it?

THE CHAIRMAN: Well, strictly speaking of course, it should be all read to us but I was just wondering ---

MR. FRAWLEY: I would be very glad to do that.

THE CHAIRMAN: I was just wondering whether it would take up so much of your time. If you think it is deairable that we should have it read.

MR. FRAWLEY: Could you state the substance of it?

THE CHAIRMAN: We will ultimately read it and I was just thinking of saving your time.

MR. MAHAFFY: Well, I do not object to the time, sir, except I do not want to waste the time of the Commission but it struck me you would perhaps like to know what the correspondence was before I address myself to it.

MR. FRAWLEY: It might make your submission more understandable.

THE CHAIRMAN: I think perhaps so, either one of you might read it.

MR. FRAWLEY: This began with a telegram to Dr. Brown. The telegram I have not got but I incorporate it

in a letter a day or so later and I will take it from that letter, a telegram which was despatched on the 13th of November to Dr. Brown from myself;

"How much time and expense involved obtaining from
"you estimate of increased cost and decreased spread
"involved operating imperial new plant without casing-
"head compared with estimate page sixteen your memorandum
"please wire reply."

Now I think to make the thing readable I should start with this letter, the letter I wrote of the 13th of November.

" Court House, Calgary,
" November 13th, 1939.
"Dear Dr. Brown:
" I telegraphed you today as
"follows:'

and then I quoted the telegram which I have already read to you and then my letter goes on.

'to which I received the following reply:
" 'Retel eliminating the five percent casinghead
" 'from estimated operations page sixteen reduces
" 'plant capacity about four and one half percent
" 'and net return about one percent when supplying
" 'the same markets.' "
" Now I am afraid I am very stupid, I should have read the letter from Dr. Brown first, Dr. Brown's letter, Air Mail,
" I received your day letter'

now that refers to the two telegrams of which his answer was:

" "Retel eliminating the five percent casing head from
" estimated operations page sixteen reduces plant

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" 'capacity about four and one half percent and
" 'a net return about one percent when supplying
" 'the same markets.'"

THE CHAIRMAN: Reducing "plant capacity".

MR. FRAWLEY: Reducing plant capacity about four and one half percent and a net return of about one percent when supplying the same markets. Now that is his first answer by telegraph. Then on the same day he writes confirming that telegram and then his letter goes on:

" This estimate could be made with-
"out difficulty by subtracting the profit on the handling
"of natural gasoline as shown on page 15 of my report.
"This is one of the reasons why I handled the natural
"gasoline as a separate item and did not include it in
"the refinery operation. The profit due to the use
"of natural gasoline as shown on page 15 is given as
"$0.0205 per barrel of crude.

" In order to replace this
"natural gasoline by similar products made from crude
"oil, it will be necessary to do a little further
"extended cracking, and it is estimated that these
"additional costs would reduce the return by an amount
"equal to approximately $0.022 per barrel of crude
"processed.

" Subtracting this amount from the
"spread indicated on page 16 of $0.4536, we have $0.4316
"as the spread obtained as gross profit when operating
"without natural gasoline.

" Making allowance for income tax,
"this means a net profit per barrel of about $0.3365.

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" But in order to produce the "same products, it will be necessary to increase the "quantity of crude run by about 4-1/2 percent, so that "the net profit per year will be $0.3365 x 5500 x 1.045 " x 365. On my little slide rule this indicates about "$703,000 representing a decrease in the net profit of "approximately 1 per cent.

" This would therefore decrease "the percent return on invested capital by about 1 per-"cent of 15 percent or approximately 0.15%.

" I hope this gives you the inform-"ation desired. There will be no charge for this work "as it took me only a few minutes. I would however "appreciate the check covering my past services at your "early convenience.

" With best wishes to the Commiss-"ioners and your other associates.

" Sincerely yours,

"Geo. G. Brown"

Then on November 13th I wrote him and simply confirmed those two telegrams. At this time you see his letter had not come in.

" Since your return to Ann Arbor "evidence was introduced by Gas and Oil Products Limited "through its refinery superintendent, Mr. L. A. Boyd, "to the effect that it will be impossible to manufacture "from Turner Valley crude a product comparable to Sky "Chief gasoline without the use of substantial quantities "of casinghead. Hence the communications with you which "resulted in your telegram and letter expressing your

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"opinion that a modern refinery is able to produce "a satisfactory product without requiring any natural "gasoline for blending.

Now, Mr. Chairman, you will remember that was filed as a separate Exhibit, that is it, as a separate Exhibit.

" First I wish you would define "your use of the word "satisfactory". If you mean a "motor fuel could be made which will operate satis- "factorily in a motor car that is one thing but if you "mean that a product of quality and volatility equiv- "alent to Sky Chief could be made without casinghead "that is quite another. I think therefore that you "should elaborate somewhat on the use of the word "'satisfactory'.

" You have also stated in your "letter to Messrs. Helman and Mahaffy of the 4th instant "that it is simply an economic question whether natural "gasoline is to be used or not . What I now require "is some information from you to indicate the economic "effect of dispensing with the use of casinghead in a "modern refinery. To this end you have advised me that "eliminating the 5% casinghead from your estimate of the "operation of Imperial's new plant at 5500 barrels per "day would reduce the plant capacity about 4½% and the "net return about 1% supplying the same markets. In "addition to this information I should like to have from "you some details showing how you came to this conclusion.

" Dispensing with the use of casing- "head would, of course, require a different operation "which would result in different yields thus affecting the

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"spread of $0.9926 per barrel shown on page 16 of
"your memorandum. Please prepare for me a calculation
"similar to that shown on page 15 of your memorandum
"computing the spread on the same operation without
"the use of casinghead. I should also like to have a
"statement computing the difference in the operating
"costs of $0.539 shown on page 16 of your memorandum.

" I presume that the gross profit
"of $0.4536 would be altered by dispensing with the
"use of casinghead and the extent of the difference in
"gross profit could be said to represent the additional
"cost of the operation.

" If it does not involve too much
"calculation would you please send me a computation which
"would indicate to what price casinghead would have to
"go before Imperial would find it more profitable to
"dispense with the use of it.

" The Chairman this morning directed
"that this should be regarded as a letter written by me
"on behalf of myself and all counsel concerned in the
"inquiry and I wish therefore that you would make several
"copies of your reply and send one each to the following:

" L. C. McCloskey,
" Imperial Oil Limited,
" 56 Church Street,
" Toronto, Ontario.

" L. E. Woolley,
" British American Oil Company Limited,
" Royal Bank Building,
" Toronto, Ontario.

" Gas and Oil Products Limited,
" Lancaster Building,
" Calgary, Alberta.

" Lion Oil Refining Company,
" Calgary, Alberta.

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" The Commission is concluding its "public sittings tomorrow but it will be arranged that "your statement can be filed as and when received. The "Chairman intimated that upon receipt of your letter "the companies might desire to pursue the matter further "with you by correspondence ultimately concluding the "matter by a final statement from you, all of which "would be filed as an exhibit.

" Yours truly "

Then Dr. Brown's letter of the 21st of November:

" Your letter of November 13th "evidently crossed mine of the same date in which I "tried to explain how I arrived at the conclusion wh ich "I wired you at that time.

" In order that the record may be "clear, I am again outlining the method by which I made "these calculations and sending copies of this letter "to those people whose names appear below.

" On page 15 of my report I showed "the natural gasoline as a separate item which was "purchased, processed and sold by the refinery at a "profit corresponding to $0.0205 per barrel of crude "processed.

" If this naturalgasoline were not "purchased by the refiner, this profit would be wholly "lacking, and I estimate the additional cost that might be "necessary due to the more extensive cracking that would "be required to increase the percentage yield of gasoline "to amount to $0.0015 per barrel of crude processed. "This then would reduce the profit per barrel of crude

"processed by a total of $0.022 per barrel.

"Subtracting this amount from the gross profit indicated "on page 16 for one barrel of crude there given as $0.4536, "we have $0.4316 as the gross profit per barrel of crude "when operating without natural gasoline.

" Making allowance for income tax "this means a net profit per barrel of crude of $0.3365.

" But in order to produce the same "quantity and quality of product without the use of "natural gasoline, it will be necessary to increase the "quantity of crude run by about 4½% so that the net "profit per year will be $0.3365 x 5500 x 1.045 x 365 "which is approximately $703,000.

" Therefore the net profit for the "year's operation of this plant when producing the same "finished products is reduced from $710,000 to $703,000.

" This indicates a decrease in "the precent return on the invested capital of about "1% of the 15% previously indicated or 0.15%.

" Based on the distribution of "the various products now being manufactured for the "Alberta district, I feel sure that a modern plant "will be able to produce gasoline of premium quality, "standard quality and third structure without the use "of natural gasoline that will in every way be compar- "able to the qualities of the similar products now being "produced with the use of 5% of natural gasoline. In "other words, the use of my term "satisfactory"product" "was intended to mean an equally satisfactory product to "that which can be produced when using the natural "gasoline.

The decrease in the capacity
"of the plant is due to the fact that approximately
"4 1/2% of additional crude must be run in order to
"make up the quantity of gasoline represented by the
"4.3% of stabilized natural gasoline previously used.
" I have indicated to the best
"of my ability what I believe would be the effect in
"increased operating cost and decreased profit due
"to the elimination of natural gasoline.
" The only difference in the
"estimate shown on page 15 that would be caused by
"the elimination of the natural gasoline would be the
"elimination of the natural gasoline item entirely from
"the tabulation on page 15, with a pro rata increase in
"yield of cracked gasoline, and a decrease in yield of
"kerosene, tractor distillate, Diesel and light fuels,
"and heavy fuels which can more easily be handled in
"the manner which I have outlined above which assumes that
"the same market must be met in either case and that add-
"itional crude must be substituted to take the place of
"the natural gasoline which has been eliminated.
" According to these estimates an
"increase in the price of natural gasoline of 20% above
"the price used for natural gasoline in my calculation,
"with all other costs constant would be about the
"maximum increase which the new plant of the Imperial
"Oil Company would be justified in paying for natural
"gasoline when processing 5500 barrels per day of
"Turner Valley crude, Since my calculations were based
"on a price of $2.1449 per barrel of casinghead, I

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"therefore estimate that the maximum economic price
"for natural gasoline would be $2.573 per barrel on
"the basis of 43° A.P.I. Turner Valley crude at $1.35
" f.o.b. refinery to the new Imperial plant when operat-
"ing at about 5500 barrels per day.

" I wish it distinctly understood
"that these figures are simply estimates made by me on
"the basis of the best information which I now have, and
"those calculations which I have previously submitted
"to you, particularly those shown on pages, 14, 15 and 16
"of my report.

" I hope this gives you the inform-
"ation requested. If not, I will try to make myself more
"clear.

" Very truly yours,
"Geo. G. Brown"

Copies were sent to L. C. McCloskey, Imperial Oil Limited, L. E. Woolley, British American Oil Company, Gas and Oil Products Limited, Lion Oil Refining Company and Mr. Fred Cottle.

THE CHAIRMAN: What do you gather from that, that the additional cost of processing a barrel of crude would be?

MR. COTTLE: Well he says the additional cost of processing will be .0015 cents per barrel and a loss of the profit on the sale of gasoline, including casinghead, is .0[illegible]2. Dr. Brown has treated the casinghead as a purchase and sale of the product, that is a sale for say 8.6 cents and the gasoline cost 6. some cents, the difference is profit

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and that profit goes out and the extra processing cost; the extra expense involved is .0015 per barrel of crude. Adding the two together the net difference in your profit position, according to Dr. Brown, is the .022; in other words, 2-1/5th cents per barrel.

THE CHAIRMAN: Now do you appreciate that, Mr. Frawley, at least is it your understanding from that correspondence which you have that he covers the point that you may make money in that particular way but that you may lose a lot more money through loss of business because you have not got the volatility in cold weather.

MR. FRAWLEY: Yes, we take it that that is all dealt with as we read his letter in this one paragraph in which he says :

> "Based on the distribution of the various products now "being manufactured for the Alberta district, I feel "sure that a modern plant will be able to produce "gasoline of premium quality, standard quality and "third structure without the use of natural gasoline "that will in every way be comparable to the qualities "of the similar products now being produced with the "use of 5% of natural gasoline. In other words, the "use of my term "satisfactory product" was intended "to mean an equally satisfactory product to that which "can be produced when using the natural gasoline."

THE CHAIRMAN: I see.

MR. FRAWLEY: Now the next letter to read is Mr. McCloskey's answer to that letter, I think.

THE CHAIRMAN: You say that, in your opinion, that

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goes to the length of saying that its starting qualities are just as good?

MR. FRAWLEY: Oh, yes, when he says "satisfactory". Now we had him here to cross-examine, we might have put all that in but when he says "satisfactory", assuming a man of that calibre knows what he is talking about and that that is always present in his mind, volatility, when he says "satisfactory" it covers volatility and starting fractions.

MAJOR LIPSETT: That is from an inspection of the Imperial Oil Plant but he has never seen this Gas & Oil Products Plant.

MR. FRAWLEY: As Mr. Cottle says, it is based on what his engineering knowledge is of what could be done in these plants.

THE CHAIRMAN: By any modern plant?

MR. FRAWLEY: Oh, yes, that is what he means of course.

Now Mr. McCloskey says this, on November 24th, he wrote to Dr. Brown in reference to that letter and he says this:

" Referring to your letter of "November 21st to Mr. Frawley:

" You mentioned in the last "paragraph of Page 2 that the maximum price Imperial "would be justified in paying for Natural Gasoline "would be $2.573 per bbl. or 20% over the present "price for this product. This may be interpreted "that the present price for Natural Gasoline is too "low.

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" As we see the situation, a "20% increase in price would eliminate entirely any "profit from processing Natural Gasoline. Further, "it is indicated in your letter that the profit on "the hypothetical plant would be slightly reduced "if Natural Gasoline were completely eliminated. "This, to us, indicates that the present price of crude "oil and Natural Gasoline are on a parity.

" We would appreciate very much "if you would point this out to Mr. Frawley as it may "be interpreted that the present price of Natural "Gasoline is too low. "

" Now it was in answer to that that the next letter was written to me, dated November 25th, from Dr. Brown to myself.

"Dear Mr. Frawley:

" In my letter to you of November "21st, page 2, last paragraph, I stated that according "to the estimates I had made for the operation of the "Imperial plant without the use of natural gasoline, "that an increase in the price of natural gasoline to "20% above the price used in my calculations would be "about the maximum increase which the new plant of the "Imperial Oil Company would be justified in paying for "natural gasoline when processing 5500 barrels per day.

" I find there was a slight error "in these calculations in that I neglected to take into "account the constant item of the cost of processing "the natural gasoline with the result that the maximum "economic price for natural gasoline would be approx-

"imately $2.60 per barrel on the basis of 43 gravity,
"Turner Valley crude at $1.35 f.o.b. refinery when
"operating the new Imperial plant at about 5500 barrels
"per day.

" Although this correction is
"probably well within the errors involved in my estimate,
"I think it should be called to your attention.

" Very truly yours,

"Geo. G. Brown"

(Go to Page 16,224)

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MR. FRAWLEY: Now let us see what he had said. $2.60 is what he now says it should be. What had he said before?

MR. HOLAN: 2.53.

MR. FRAWLEY: This is the price of natural gasoline which the Imperial calls absorption gasoline. The next letter is simply my acknowledgement of the 27th of November.

"

Court House,
Calgary,
November 27th, 1939.

"Dear Dr. Brown:

Re: Royal Commission on Gasoline.

" Acknowledging your "letters of the 21st instant and 25th instant, insofar "as we are concerned you have dealt sufficiently with "the problem raised by Mr. Boyd's evidence.

" Under the arrangement "referred to in my letter to you of the 13th instant we "will file your letters together with any further corres- "pondence which arises at the instance of any of the persons "concerned, namely Mr. McCloskey, Mr. Woolley, Gas and "Oil Products or Mr. Plotkins.

" Yours very truly,

" J. J. FRAWLEY,
" Commission Counsel. "

J.C.Mahaffy, K.C.

The next letter is Dr. Brown's letter to myself, ~~a~~

" November 30, 1939.

"Mr. James A. Frawley,

"Commission Counsel,

"Court House,

"Calgary, Alberta, Canada.

"Dear Mr.Frawley:

" In my letter of "November 21st and also in the letter which "followed a few days later in which I stated that "the highest price that could be paid for natural "gasoline, on the basis of $1.35 at the refinery "for 43 gravity Turner Valley crude oil, was $2.60 "per barrel of natural gasoline, I am not sure "that I made clear the fact that this estimated "maximum price is a price for natural gasoline "at which the refiner would be no longer justified "in purchasing natural gasoline and using it in "his finished products.

" In other words, this "estimate of $2.60 per barrel for natural gasoline "is a price at which natural gasoline in Calgary "would lose its present market to the petroleum "refiners, in much the same way as a price of $1.78 "for Turner Valley crude would put the crude in "position of losing all of its markets even in "Calgary in the manner set forth on pages 5 and 6 "of my earlier report.

" I believe I should "also call to your attention the fact that any

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"change in the crude oil price from $1.35 at the
"refinery in Calgary would also affect the price
"which could be paid for natural gasoline. Within
"narrow limits this effect of the crude price on the
"maximum price for natural gasoline might be computed
"on the basis of a percentage reduction. That is,
"if the price of crude oil at the refinery is decreased
"10% from the price of $1.35 per barrel, it would
"follow that the maximum price that could be paid for
"natural gasoline would be similarly reduced by about
"10%. Although this method is not accurate over wide
"price fluctuations, it will introduce no substantial
"error for small changes in the price of crude.
" The use of natural gasoline
"by the refiner is wholly an economic problem. He is
"justified in using natural gasoline, and will use
"natural gasoline, only so long as he can make a little
"greater profit by the use of natural gasoline than
"he could without its use. As the profit that the
"refiner can make on the use of natural gasoline is
"decreased, the point is reached where the profit is
"so small that it does not justify the refiner taking
"the trouble to handle and treat the natural gasoline.
"The maximum price that I have estimated for natural
"gasoline on the basis of $1.35 for crude, is the
"price at which this profit is entirely eliminated
"and therefore a price so high that no refiner would
"be justified in using any natural gasoline.
" The price of natural
"gasoline should be so set that the refiner can make
"an adequate profit by using natural gasoline, as is

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"the case at the present time.

Very truly yours,

"Geo. G. Brown". "

A copy of that letter was sent to Mr. McCloskey, Mr.Woolley, Gas & Oil Products, Lion Oil Refining and Mr. Cottle. Now that is all the correspondence.

THE CHAIRMAN: Do you think he is just dealing with the Imperial operations? Would you say he had in mind the difference that might result to a refiner who did not have it at all, and wants it?

MR. FRAWLEY: I surely think he had in mind....well I wonder if we could get that earlier correspondence, and bring it all up to date and see what that letter says that Mr. Mahaffy wrote.

THE CHAIRMAN: All this arose out of Mr. Boyd's evidence with relation to volatility.

MR. NOLAN: Exhibit "719".

MR. FRAWLEY: I would like to put beyond any question - we think there is none but we can say to Dr. Brown in so many words "Volatility is what we are bothered about and what do you say about that?" We could do that in a telegram and get an answer tomorrow or today.

THE CHAIRMAN: Mr. Mahaffy might have something to say about it.

MR. FRAWLEY: Yes, Mr. Mahaffy may not be challenging that.

THE CHAIRMAN: It must be very flattering to Mr.Ray to have Sky Chief taken as the standard gasoline in your correspondence, Mr.Frawley.

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MR. RAY: It is quite natural for the reasons I explained to you yesterday.

MR. FRAWLEY: I did that of course - the Texas Company has spent so much money on advertising its products that they do not need anything from me - but Mr. Mahaffy gave me the lead there. His client, Mr. Boyd, talked about that.

MR. COMMISSIONER LIPSETT: There was an exhibit "718", a letter from Gas & Oil Products to Mr. Mahaffy. Exhibit "718" and Exhibit "719".

MR. FRAWLEY: No. Well, Exhibit "718" is a letter to Mr. Mahaffy from his client, giving him the amount of the runs. But it was Exhibit "719". Dr. Brown writes me, and incorporates a telegram which he had received from Mr. Mahaffy. He writes from Ann Arbor, Michigan, November 4th.

"Dear Mr. Frawley:

" I have received the

"following day letter under dateeof November 3rd,

"We act as solicitors for Gas and Oil Products
"who operate a refinery at Turner Valley and
"we have contended before McGillivray Commission
"that in view of climatic conditions in this
"country natural gasoline is required for
"blending purposes Stop We did not examine you
"in connection with this point at hearing Stop
"would appreciate wire collect indicating
"whether or not you agree with our contention.
" (Signed) Helman and Mahaffy "

"to which I have wired an answer as follows:

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"retel natural gasoline desirable for blending
"when economically available but not necessary
"to a modern refinery in Turner Valley."

" I thought you should be informed of this corres-
"pondence as I do not know to what purpose they may
"wish to put my answer.

" Sincerely yours,

Geo. G. Brown, "

Then he sent me a copy of the letter which he also wrote the same day to Mr. Mahaffy's firm.

"Helman and Mahaffy,
"Calgary, Alberta, Canada.
" Gentlemen:
" In reply to your day
"letter of November 3rd inquiring as to the necessity
"of using natural gasoline for blending purposes,
"in the refining of Turner Valley crude, I have wired
"you collect as requested as follows:-
" "Retel Natural gasoline desirable for blending
"when economically available but not necessary
"to a modern refinery in Turner Valley."
" Natural gasoline is
"an economic and profitable raw material to be used
"in the refining and production of motor fuel under
"the conditions which I assume to exist in the
"calculations made for the McGillivray Commission
"and on which my testimony was based.
" If the price of natural
"gasoline is too high, or if the material is not

"available, a modern refinery is able to produce "a satisfactory product without requiring any "natural gasoline for blending. In other words, "it is simply an economic question whether natural "gasoline is to be used or not.

" I hope the wire was "clear to you, and if not that this letter may "make my position clear.

Very truly yours, "

Then we endeavoured to make it more clear by asking him to explain his use of the expression "satisfactory product" and then he gave it to us as you have heard.

MR. COMMISSIONER LIPSETT: Does that mean that it is desirable in itself or only desirable if it can be got cheaper?

MR. FRAWley: I think that is what it means. It is the dollars and cents. It is very satisfactory up to a point and after that it is not so satisfactory.

MR. COMMISSIONER LIPSETT: I wondered whether he intended it to be preferable if the two were at the same price?

MR. FRAWLEY: If it is just evenly balanced using that natural gasoline as a blender or more intensive cracking without the use of natural.....

MR. COMMISSIONER LIPSETT: If the cost is the same is the use of it preferable? He uses the word "desirable".

MR. NOLAN: One is very much more valuable than the other. As I understand it, Mr. Chairman, he says there is a point at which you arrive at which it

will not pay the refiner to use absorption at all. That point, as I understand it now is $2.60 a barrel. That is where you go out of the picture. You do not use it. As I also understand with my operation if I do not use absorption at all it makes a difference because I have to run more crude and my profit position is $7000.00 less per year, a difference of 1% of my earnings. Is that stating it correctly?

MR. COTTLE: Yes, that is quite right. Dr. Brown states in his letter that dispensing with casinghead and making the same product it would decrease the profit by 2-1/5 cents per barrel, but by reason of running more crude there is not that difference in the ultimate result at the end of the year, because as he says the profit on the Imperial's new plant would be $710,000.00 with casinghead and $703,000.00 without. It is a difference of 1% in the profit.

MR. COMMISSIONER LIPSETT: What I was wondering was supposing you just got it at the economic figure of just under $2.60 at which each would cost the same. You had the two commodities. Is it more desirable to use casinghead than not?

MR. COTTLE: I would say according to Dr. Brown you are just on the fence. It is a flip of the coin whether you do use it or not.

MR. COMMISSIONER LIPSETT: It is a matter of money?

MR. COTTLE: It is a matter of money.

MR. NOLAN: He says that clearly. He says the problem is an economic one, and it is just whether it costs more to buy it that makes it worth while

to use it or not. If you have not got it, it is, under my operation, 1%.

MR. COMMISSIONER LIPSETT: It was the use of the word "desirable".

MR.NOLAN: In that early letter.

MR. COMMISSIONER LIPSETT: Yes.

MR. FRAWLEY: "Natural gasoline is an economic and profitable raw material to be used in the refining and production of motor fuel under the conditions which I assume to exist in the Calculations made for the McGillivray Commission and on which my testimony was based. If the price of natural gasoline is too high or if the material is not available, a modern refinery is able to produce a satisfactory product without requiring any natural gasoline for blending."

Now if, Mr. Chairman, you still have a lingering doubt as to how far Dr.Brown would go if he were here and we were exploring with him the use of that language, perhaps it would be better to put it beyond any possible doubt. Surely he is a man who knows and he must surely have had volatility in his mind.

MR. COMMISSIONER LIPSETT: It was in one of the other letters where he used the word "desirable". I thought he meant if it is possible to get it at the same price that it was preferable. That is what I was trying to clarify.

THE CHAIRMAN: It is an economic problem. But I am wondering if he has considered the economics of the loss of business through non-starting quality. Certainly you may just have as good a gasoline but the average man is going to buy a gasoline with which

his car will start quickly in winter. However, if you think that is sufficiently covered.

MR. FRAWLEY: Perhaps it would be said it was not as good, because good means good for the country and the time. We do know they change their gasolines in winter in this country from what they use in the Summer. What I am concerned about is perhaps Mr. Mahaffy is not challenging the situation, and that is perhaps more important and then we might.....

THE CHAIRMAN: Well, Mr. Mahaffy?

MR. MAHAFFY: I perhaps should deal with the point we have been discussing, but before I do so, and before I overlook this other point, I want to give you some information, if I may, with respect to the problem that was discussed yesterday afternoon. You remember that the percentage of natural gasoline came up for discussion, and I gave the Commission the page number where Mr. Boyd said he would need 18% at present for use with the cracked product. Now Mr. Mayland is at the Coast and I was not able to get Mr. Boyd late yesterday afternoon on the 'phone but I did get him on the telephone at Turner Valley this morning. Now I would like to make this statement if I may. I realize probably in a sense it is adding to the evidence but I would like to give the figures that I got from him on the telephone in explanation of the phrase that he used "18% at present." Now he told me that it was his estimate of the winter requirements.

THE CHAIRMAN: You say, as I understand it, you are not adding to the evidence but you are merely explaining a portion of the evidence?

MR.MAHAFFY: Perhaps I could give

these figures and then you, my Lord, can decide. I would like to explain that statement he made of "18% at present". That was the requirement for winter gasoline and I think there is evidence that shows that the requirement in the summer time is not nearly as great. The actual refinery run of crude I do not believe is in the evidence but it is approximately 8,750 gallons per day. Mr. Boyd did say that his casinghead or natural gasoline requirements for that cracked product would be 700 to 750 gallons per day and taking the figure of 700 that works out to a yearly average of about 8%. Now I just wish to put that to the Commission. It was suggested that our 18% figure was very much higher than the 5% from the new Imperial plant.

MR. FRAWLEY: If you do not mind would you mind going over that again. Mr. Cottle did not get it.

MR.MAHAFFY: Mr. Boyd said in the evidence that at present the requirement for standard and Ethyl products was 18% of natural gasoline. The way the thing works out on a yearly average basis according to his figures is a yearly average of 8%. That 18% figure was his figure on the basis of winter gasoline.

MR. COTTLE: How do you work it out to 8%?

MR.MAHAFFY: The refinery run. Mind you these figures are somewhat even yet in the realm of estimate because the plant is just getting under way. The refinery run of crude is 8,750 gallons. That is the output whatever technical.....

MR. COTTLE: Of gasoline?

MR.MAHAFFY: Of gasoline, yes, and Mr.

Boyd stated in the evidence that his requirements of natural gasoline for blending with that output was 700 to 750 gallons per day.

MR. COTTLE: That was additional?

MR.MAHAFFY: That is the additional amount.

MR. COTTLE: 8,750 is additional?

MR. MAHAFFY: That is the output from the new cracking unit.

MR. COTTLE: Over and above....

MR.MAHAFFY: Past operations,yes.

Now, Mr.Chairman, I would like to deal with the question of the correspondence filed from Dr.Brown.

MR. FRAWLEY: Well, where have we arrived at with respect to Mr. Boyd's estimate? For my part, Mr. Chairman, it is not for me to say, of course, but as far as I am concerned I have no objection to Mr. Mahaffy introducing new figures. That does not bother me at all. I would like him to deal with Exhibit "718" because in that exhibit his client advised him that"the natural gasoline used in the manufacture or the finished product was 24%. That is in this way. Crude charged to stills, January 1, 1939, to September 30th, 1939, 8,021,490 gallons. Natural gasoline recoveries, the same period, 1,358,199 gallons. Then natural gasoline used to manufacture finished products 24%. This figure of 24% as shown covers natural gasoline used in the manufacture of our Purity and fuels used for farm purposes, and we would like to point out that with our cracking plant in operation a very considerable amount more natural gasoline will be used." Now then so that there will be no possible misunderstanding of the fact,

Mr. Mahaffy, in the 8% you are now introducing into evidence, is it 24% plus 8% which is 32%, or is it an average of 24% all around?

MR.MAHAFFY: My Lord, the question that came up yesterday, unless I misunderstood the situation, was that your Lordship queried the amount of natural gasoline which Mr. Boyd had said it would be necessary to blend with Ethyl gasoline and Standard "Q" brand gasoline in order to gain his necessary volatility and we referred to the evidence and Mr. Boyd said"18% at present." He was referring there to the Standard and Ethyl gasolines. Then somebody mentioned that the Imperial was 5, and I suggested that Mr. Boyd was talking about winter gasoline at the present time, and that the Imperial figure which Dr.Brown was using was the yearly average, and that is why I have mentioned this today. Mr. Boyd did say 18% at the present time.

THE CHAIRMAN: And your yearly average you now say is what?

MR.MAHAFFY: My yearly average on those two gasolines is 8%. I am not saying that we do not use a larger percentage than that in our third structure and our tractor gasoline, but I am just trying to answer the question that was put to me yesterday as to the percentage that we required on a yearly basis for "Q" brand and Ethyl.

THE CHAIRMAN: Now Dr. Brown's 5% referred to what? "Q" brand and Ethyl?

MR. MAHAFFY: As I understand it that is the total plant requirement of the Imperial Oil

MR. FRAWLEY: That is just the neat

point. Dr. Brown says 5% for the whole operation, comparing natural to crude on the whole refining operation.

MR. MAHAFFY: I think that is right. He is taking it on the basis of Imperial using 5% for their whole operation.

THE CHAIRMAN: You say on Ethyl and "Q" you require 8%. Do you add what you would require on all other products?

MR. MAHAFFY: The evidence of Mr. Boyd was on that, I think it is on Page 15,543, that "on the third structure gasoline I would say we use an average of 25 or 30%."

THE CHAIRMAN: Page what?

MR.MAHAFFY: Page 15,543.

THE CHAIRMAN: Volume?

MR.MAHAFFY: Volume 139, and he went on to say that he required that much in order to turn out the products that he has been turning out.

MR. COMMISSIONER LIPSETT: Does he give either directly or by inference from that the daily average that is required for the third structure, Mr. Mahaffy?

MR. MAHAFFY: You mean in gallons?

MR. COMMISSIONER LIPSETT: Yes?

MR.MAHAFFY: Not just at that point he does not, but in the evidence, I can give you the reference, he fixes it at 5500 gallons per day.

MR. COMMISSIONER LIPSETT: That means you require about 6200 gallons?

MR. MAHAFFY: 6200 gallons per day. Those figures are found at Pages 15,506 and 15,512 in Volume 138.

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MR. FRAWLEY: That compares with how many barrels of crude,have you got a reference to that?

MR. MAHAFFY: No, I do not think there is any total crude shown in the books.

MR. COMMISSIONER LIPSETT: Have you got the amount that you actually get now of this casinghead from any of these figures?

MR. MAHAFFY: The amount we have been getting is 5500 gallons per day.

MR. COMMISSIONER LIPSETT: Leaving you about 700 gallons short?

MR. MAHAFFY: Well, my argument will be, Sir, when I come to that phase of it, that we are not suggesting any change in the way of an increase. We are simply going to suggest to the Commission that the matter should be allowed to stand ~~and~~ as is.

MR. FRAWLEY: I do not want to be thought to be overly anxious about this, and I am not at all. But I am just wondering when some time the Commission may want to go to Mr. Cottle and have some computations done on this material, will it all be as clear as it should be, and if it is not, I suppose now is the time to make it, instead of worrying about it afterwards when Mr. Cottle may be short of information. I only mention it because he is now inclined to think that perhaps there is not enough material for him to make a satisfactory computation.

THE CHAIRMAN: At the noon hour supposing that you put before Mr. Mahaffy exactly what

you do want.

MR. COTTLE: Yes, I will be glad to do that.

MR.MAHAFFY: And I will be glad to dig up any further figures Mr. Cottle wants.

THE CHAIRMAN: I take it I am receiving this in the sense that it is not truly new evidence, but it is just straightening out a misunderstanding in respect to the evidence already given. So I think that is a simple way to deal with it.

MR. MAHAFFY: I think, Sir, that was the only point that was in the nature of unfimished business from yesterday.

THE CHAIRMAN: Yes.

MR. MAHAFFY: As I say now, I would like to go on just to say a few words about the correspondence which Mr. Frawley has read, exchanged between himself and Dr. Brown. Now it is true that Boyd, who, after all, is a practical man and operating this business, gave evidence to the Commission that in his view natural gasoline was an essential to the attainment of suitable volatility in the gasoline he is manufacturing. No doubt he gave that evidence, as I say, as a practical man from a practical viewpoint, having in mind the conditions under which he is operating and the competition which he has to meet. Dr. Brown has, in his correspondence, said in effect, I suppose what is generally true in any branch of life, that nothing is impossible. He has said that and I am prepared for the purposes of this Argument to accept his views, that a satisfactory motor fuel can be manufactured without the use of natural gasoline. As I

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say nothing is impossible. But there are one or two things in connection with the figures given by Dr. Brown that I would like to draw to your attention.

(Go to Page 16,241).

Dr. Brown's figures are based on the assumption that Imperial Oil, first of all is operating its new plant and secondly on the assumption that it is,-and I suppose it in fact is,-purchasing this natural gasoline from the Royalite Oil Company, Limited, and at the present time it is paying $2.1449 per barrel, according to Dr. Brown's figures; in other words it is paying roughly $2.14 per barrel for the casinghead which it is using or, should I properly say, which it will use in its new plant. Then Dr. Brown goes on to say that should that purchase price for any reason increase to $2.60 per barrel more, then he says Imperial would not be justified in buying at anything over that price. They would be better off to re-arrange their system or whatever else has to be done to enable them to manufacture without natural gasoline.

Now what I want to point out sir, is, Boyd has looked at this from the practical point of view and I am trying to put it to the Commission from the practical point of view. The fact is that Imperial buys that casinghead or that natural gasoline from its own subsidiary, Royalite Oil Company, Limited. The figure of $2.14½ I take it is the field price. Now in this case the field price means very very little. The evidence shows that there are three companies operating absorption plants in the field, the British American Oil, ourselves, Gas and Oil Products, and the two Royalite plants. Now I think the evidence also shows that Gas and Oil Products certainly has none of this stuff for sale at the present time. That Royalite has not

any for sale and I think we can also say that the British American Oil Company has none for sale, so the only person who, in any sense of the word, is selling this product is the Royalite Oil Company and it is selling entirely to the Imperial Oil and that is the only basis on which the field price is fixed.

Now the point I want to make is that if for the purposes of this argument we treat Imperial and Royalite as a single unit, then the cost of this Natural Gasoline to the Imperial obviously is not $2.14½; they produce it themselves, and while that is the price, the inter-company price, which has been arbitrarily set, I think we can safely conclude that that is not the cost of producing that natural gasoline insofar as the Royalite is concerned; certainly we can say with confidence that that is not the cost of producing this product in Gas and Oil Product's plant.

Now so far as Gas and Oil Products, Limited, is concerned our cost would go away out of sight for producing our products if we had to pay $2.60 per barrel for natural gasoline.

Now I am taking Dr. Brown's assumption that we can,-it might involve plant renovation and improvements and such as that,-but that we can theoretically produce a satisfactory fuel in our plant without this stuff, but if we had to do that or if we had to pay $2.60 per barrel, which is about 7½ cents a gallon, for natural gasoline, we could not possibly produce our finished product at anything like the price that we now do. 7½ cents a gallon is getting awfully close to the refiner's selling

price of his finished product.

Now if we were placed in the position where we had to operate on that $2.60 basis and Imperial-Royalite were left on the present basis, whereby they could produce the stuff quite cheaply and use it in their refining operations, then the competitive situation, as far as we are concerned, is completely thrown out of kilter and we are placed in a very unfavorable position insofar as our chief competitor, Imperial Oil, is concerned in the production of the gasoline and that, sir, is one of the reasons, as I say, why Boyd, as a practical man, has said and made it quite clear that he cannot hope to stay in the swim if he is not allowed to produce his requirements of natural gasoline. Now I hope I have made that clear with respect to the Dr. Brown letters. I am willing to assume, to repeat, that Dr. Brown is correct and that this product can be made with the necessary volatility but what I do say is that he is assuming,-his figures show it,-that these prices of $2.14 a barrel and $2.60 a barrel,-and he is overlooking the fact that both Imperial-Royalite and ourselves produce that natural gasoline for much less than that figure,-if they are allowed, that is if Imperial-Royalite, are allowed to continue to produce it and use it in their refining operations at the cost of producing it and we, on the other hand, have to go out and either change our plant and do without natural gasoline or in the alternative even if we pay $2.60 a barrel for this stuff, then our competitive position then is not fair and for that reason we say we wish to be able to

produce our own natural gasoline in our own plant.

MAJOR LIPSETT: Where does that lead you to, Mr. Mahaffy? Does that mean there would have to be pro-ration for market of the casinghead, some system of that sort?

MR. MAHAFFY: Well sir, that is something which is difficult too. Now the production is not like the crude oil. In the case of crude oil thus far we have had pro-ration to market because the market does not equal the production and consequently we have a reduction in the production but with the natural gasoline it is just the reverse position. There is not enough natural gasoline for everybody who wants it, so that the evidence shows that the Imperial-Royalite require all that they produce. They have no surplus. We are certainly fighting desperately to keep what we produce and I think the British American Oil is in about the same position, so that it is not the same as the crude oil. There is no surplus. There is a deficiency.

MAJOR LIPSETT: I was just wondering what the suggested remedy that you would suggest is?

MR. MAHAFFY: Well sir, if I may just postpone my answer to that for a little, I hope that I will have a suggestion in that respect.

MR. FRAWLEY: There is evidence before the Commission, I do not know whether my friend knows it or not, showing the cost to the Royalite Oil Company of the casinghead which they sell to the Imperial, Exhibit "695" and "696".

THE CHAIRMAN: What do they show.

MR. FRAWLEY: As a matter of fact I was just

going to ask Mr. Cottle to figure that. That statement does not show the cost per barrel, does it, yes, the Exhibit is just as good as it is and no more. Mr. Cottle says he does not know what is in here and what is left out of here but that can be determined I suppose by an examination of it. I am simply saying that Exhibits "695", "696", "697" and "698" purport to show the operating expenses of the two gasoline plants of the Royalite Oil Company. Now what they fail to show will emerge from an examination of the Exhibit and on the contrary what they do show will also emerge and I notice, looking at the document, it does not result in a cost per gallon figure. It shows the gallons produced, it shows the total expenses of the plant. Then the gallons produced. The gallons delivered. The receipts from sales, which is a sale at the field price, to the Imperial; the price per gallon sold and the royalties. Now I do not know whether Mr. Cottle can come to a conclusion. I thought at one time it had been figured out roughly by him for my information and it was something about 2 cents, 2 or 3 cents, but I do not know whether or not that is right. Certainly if a figure is to be used we should know its imperfectionsand what is in it.

MR. MAHAFFY: Now, sir, in support of Mr. Boyd's contention that natural gasoline is a necessary blending agent or at least even considering Dr. Brown's letters, a most useful and probably a necessary blending agent, Boyd gave considerable details of his experience in the United States, which I think are very interesting in that they show through his experience the importance

of natural gasoline as applied to the petroleum industry down there. He pointed out that in his experience, which is very extensive, in the Southern States in natural gasoline plant work, that considerable quantities of these products were shipped to various countries in Europe, (P.15,462). Now that is an enlightening statement. It seems strange if it is not a very useful and necessary thing that refiners in Europe would bother to import it. He said that so far as he knew all the refineries in the United States used this product and he cited many cases where the United States refineries who did not have the stuff available from their own operations, actually purchased their requirements from companies who did produce it (P.15,462-3), (P.15,471-2).

He said that while he was employed in the States that the company for which he was working had made very substantial shipments from time to time of natural gasoline to a Winnipeg refinery in Canada (P.15,472), and he also pointed out that prior to the year 1939 when the production of gas was substantially reduced by the Conservation Board, prior to that time Gas and Oil Products had a surplus of this product and it was sold to not less than 19 independent refineries throughout Western Canada (P.15,465), including the Consumers Co-operative in Regina which he said had a fairly large throughput. Mr. Boyd was not able to say what these refineries, these smaller independents, had been able to do since shipments from Gas and Oil Products, Limited, had stopped but he did know that Consumers Co-operative at Regina were importing natural gasoline from group 3, which

is the Oklahoma field. (P.15,525).

Now those facts I submit go a long way to establish the practical requirement of this product in the manufacture of gasoline.

There was further evidence given and I want to emphasize this, that in the event of Gas and Oil Products not being allowed to produce its own supply of natural gasoline, that it cannot purchase this product anywhere in Canada, and the only other reasonable source of supply would be group 3, Oklahoma and Kansas, and Mr. Boyd gave figures showing that the cost of imports from Group 3 would be absolutely prohibitive, it worked out to something like 21 or 22 cents per gallon laid down at Hartell (P.15,509).

I want to make that clear. I had one or two informal discussions with Mr. Cottle with respect to that importation and Mr. Boyd is quite definite in his evidence that the cost of importing from Group 3 would be absolutely prohibitive and that they could not do it and carry on.

Now another important point which should not be lost sight of as emphasized by Mr. Boyd is that by using natural gasoline the tetra-ethyl lead susceptability of the finished product is greatly increased, with the result that much less tetra-ethyl lead may be used in order to achieve the same quality (P.15,459-60) (P.15,473). Now that is an important point I think in favour of the use of natural gasoline because of course tetra-ethyl lead, as the Commission knows from the evidence again, is an expensive product.

THE CHAIRMAN: Would you not say, it does not at all follow that we accept what Dr. Brown says against what Mr. Boyd says, but would you not get from what Dr. Brown says that he has that in contemplation too.

MR. MAHAFFY: He may have that, sir. I am willing to assume that he has, so far as the costs are concerned, but it is clear from the evidence of Boyd that there is a reduced cost in that less lead is needed.

Now I wish to submit with great respect that the evidence as I have summarized it definitely establishes that natural gas is a valuable, and indeed an essential, constituent of the products marketed by Gas and Oil Products, Limited, in competition with the other marketers in this same territory who have supplies of natural gasoline available to them. Now I think Mr. Boyd made it quite clear that if we were all thrown back into the same fold, none of us had it, that is one thing, but for one to have it and the other not to have it, that is something which we submit under the circumstances here would be unfair to Gas and Oil Products. It should also be emphasized that the general public, particularly the farmers who use the bulk of the third structure gasoline and tractor fuel are receiving, as a result of the use of this product, a much superior third structure and tractor gasoline, provided at a less price, than they ever did before and at a less price than they would be able to get it at in my submission if this production of natural gasoline is suspended.

Now I submit, and I do not

think it can be denied, that notwithstanding the great value of this natural gasoline, a value which I submit is much in excess of its actual market value considering its field price, that the Conservation Board apparently have attached no value to it whatsoever in arriving at the allowance of the gas wells in the field. Now I just want to briefly run over Mr. Boyd's evidence with respect to the requirements of his plant insofar as natural gasoline is concerned and translate those requirements into gas volumes. He estimated that the requirements of the company would average about 6,250 gallons per day of natural gasoline. That figure included about 700 to 750 gallons per day for blending with gasoline produced from the new cracking unit (P.15,506) and (P.15,512).

He said that it would be necessary to put through the absorption plant between 15 million and 16 million cubic feet of gas per day in order to recover that amount of product (P.15,512) and of course as members of the Commission will recall, that figure of 15 or 16 million was on the basis of gas produced from the gas-cap and you will also recall that the gas from the gas-cap produces about, roughly speaking, twice as much natural gasoline as does the gas from the crude well area; consequently if crude well gas is used for processing in this plant it would require approximately 31 million cubic feet per day (P.15512).

THE CHAIRMAN: Where are you reading, Mr. Mahaffy?

MR. MAHAFFY: These figures, sir, are

quoted in my brief at page 7.

Now the Commissioners will remember also that when this plant was originally constructed in 1934 the throughput of the gas through the plant,-and at that time it was entirely gas-cap production, was approximately 54 million cubic feet per day. (P.15,516). Now of course at that time there was no crude oil production in Turner Valley. It was in November 1936 that the first crude well was discovered in Turner Valley. Then for various reasons from the time the plant commenced operations down to the year 1938 that throughput was cut down to about 31 million cubic feet per day and that situation existed until early in the year 1938 when the orders of the Conservation Board became effective and the throughput of gas was then reduced to approximately 12 million cubic feet per day and practically all of that is gas from the gas-cap.(P.15,478), (P.15,481-2).

Now, sir, I would just like to interject this remark right here now while I think of it, I am attacking the Conservation Board, that is quite true, but at the same time I think I have emphasized to the Commission before,-but I want to do it again,-that we are not opposed to conservation but there are some of the orders which are now contemplated to which we do take strenuous objection and that is the reason that we made the submissions to you, but I would not want it thought that we are taking the bald attitude that we are opposing conservation in any way, shape or form.

Now the company at the present

time is making every effort to secure gas from the crude wells----

MAJOR LIPSETT: May I interrupt that for a moment.

MR. MAHAFFY: Yes.

MAJOR LIPSETT: On this page 7, you say your plant would require 15 to 16 million cubic feet at present?

MR. MAHAFFY: That is right, sir, to produce 6,250 gallons per day.

MAJOR LIPSETT: Yes, and as against that the entire allowable for everybody is 12 million, is that right?

MR. MAHAFFY: Oh no, it is 12 billion, sir, if I have the figure in mind which I think you have reference to.

MAJOR LIPSETT: January 1939, the last sentence on page 7.

MR. MAHAFFY: Oh I see what you mean, sir, yes, well at the present time we have an allowable gas production from the gas-cap of 12 million cubic feet per day.

MAJOR LIPSETT: That is yourselves have.

MR. MAHAFFY: That is right, sir. That is going through our plant right now and has been since early this year, 12 million cubic feet per day.

MAJOR LIPSETT: This is your figure then.

MR. MAHAFFY: Yes.

MAJOR LIPSETT: What you say now is you are short about 3 to 4 million cubic feet per day for your plant.

MR. MAHAFFY: Yes, to provide for the 6,250 gallons, we would need that extra gas but as I said a few minutes ago, what I am going to submit is that we would be satisfied and we feel that a reasonable ground of compromise has been reached to allow the gas-cap withdrawal at 12 million, while we would go about the job of getting some more crude oil gas as fast as we can.

MAJOR LIPSETT: You are really scared of any restriction in the present figure.

MR. MAHAFFY: That is right, sir, and Mr. Commissioner, you will remember that Exhibit "676", the proposal which came out from the Board, if given effect to by the Board would reduce our throughput of gas to a little over 3 million cubic feet per day.

MAJOR LIPSETT: Yes, I remember that now.

THE CHAIRMAN: You say you are apprehensive. You do not know what the Board is going to do but their conduct thus far, as evidenced by their letters, is justification for your apprehension?

MR. MAHAFFY: That is it.

THE CHAIRMAN: If they would say to you "We think it equitable under all the circumstances to permit you to get what you are now getting" you would be content .

MR. MAHAFFY: That is it.

MAJOR LIPSETT: You would be losing on the previous order 75% of your present supply, you would only be getting 25%.

MR. MAHAFFY: I did not just quite get that.

MAJOR LIPSETT: You say you would be cut down from 12 million cubic feet to 3 million cubic feet, under the proposed order?

MR. MAHAFFY: That is right.

MAJOR LIPSETT: Then you would be only getting 25% of your present supply.

MR. MAHAFFY: Of our present supply, that is right.

MR. COTTLE: In fairness, Mr. Mahaffy, the evidence is that that would close the plant, would it not?

MR. MAHAFFY: Yes, I go further than that, I mean to say if we are cut to 3 million cubic feet the wells that we get that gas from cannot function and then if they could function we could not function on 3 million feet. I am coming to that, which would result in the closing of the wells and in the closing of the absorption plant.

MAJOR LIPSETT: Mr. Mahaffy, just that I may get the facts for myself again, when that 12 million cubic feet is now processed by you, the balance is wasted, I mean the gas goes into the atmosphere.

MR. MAHAFFY: You mean the gas after the natural gasoline is extracted.

MAJOR LIPSETT: Yes.

MR. MAHAFFY: Well, sir, I have explained that in my brief on page 8 and we point out that the evidence indicates that after this gas has been run through the absorption process and the natural gasoline has been

extracted, then we say that that gas is not wasted, it is used to run our power machinery, it is used in our boilers; we have about 90 homes which are supplied in the vicinity of the plant with gas and you will remember there was a discussion with Mr. Boyd about the use of this gas in place of steam, for its expansive qualities in operating the machinery in connection not only with the absorption plant but with the cracking unit and the skimming plant and all the various machines on the location used in the general operation of the plant.

Mr. Boyd stated that 90% of the gas going through the absorption process is put to some such use.

MAJOR LIPSETT: And then there is only a waste of 10% of the 12 million cubic feet at the present time.

MR. MAHAFFY: On that basis. Mind you, sir, this should be drawn to your attention, the gas after it is used for its expansive qualities in the machine , say a pump, then it runs into the flare line and it is burned, quite a portion of it. Of course the gas that is used for power in the boilers and stills and so on, that is actually consumed as a fuel but that is one thing which the Conservation Board have taken exception to, and it is referred to in that letter of September 5th, which is-----

MAJOR LIPSETT: I do not want to interrupt you, if you are coming to it.

MR. MAHAFFY: I am right at that point now.

MAJOR LIPSETT: I will tell you what I had in mind to ask you and that is whether there was any way of salvaging what you do not use of this 12 million cubic feet if you had it, could it go to the Calgary line?

(Page 16,256 follows)

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MR. MAHAFFY: If there were a market for it, Sir, it would be available, such as is not actually used as fuel, but there is no market.

MR. COMMISSIONER LIPSETT: Is it too far from the Calgary supply pipe line or something?

MR. MAHAFFY: Yes, it is. The present position and Mr. LeSueur touched on that, I believe, when he was giving evidence - is that so far engineers have not found that it would be economic to transport that gas from the southern portion of the field to the Royalite plant at the north end of the field, there to be repressured and put into the gas Company's mains.

MR. COMMISSIONER LIPSETT: I remember his evidence but I did not know whether that applied also to your operations.

MR. MAHAFFY: Yes, it does, Sir. And it should also be said and probably it would be fair to mention at this time that there is far more natural gas being burned in the south end of Turner Valley than the gas that goes through this plant. Practically all of the gas in any event that is used to lift the crude oil to the surface in the crude oil area is burned in the flares at Turner Valley. Those are the flares that one sees when you are going down there, are from the crude wells.

MR. COMMISSIONER LIPSETT: There has not so far been found any economic way of salvaging that?

MR. MAHAffy: That is right, Sir. On the one hand the Conservation Board says "That is all right, go ahead and burn that gas." I do not say that they like the idea but they allow it. On the other hand they say that for us to use the gas for two purposes, namely, the recovery

of natural gasoline and thereafter to use it in the running of machinery, they say "No, that is waste and it should not be

MR. COMMISSIONER LIPSETT: The theory behind that being that it might otherwise be utilized for getting up the crude, I suppose?

MR. MAHAFFY: Yes, I have no doubt they have the idea of the use of the gas itself as fuel. I am glad, Mr. Commissioner, that you mentioned that, because I wanted to emphasize that, that in addition to the natural gasoline recovered from this gas we also do put the gas to these other uses and we say, and I think with every reason, that we put it to useful uses.

Now, that brings me down to the particular letter of September 5th, 1939, which letter the Gas Conservation Board sent out to all operators of wells in Turner Valley, indicating that they intended to issue an order making drastic changes in the allowable production of gas from those wells. It is the letter dated September 5th, and is in, Mr. Chairman, as Exhibit "595", and it is reprinted on page 15,497. I do not need to read it. I think the Commissioners will recall the letter to which I am referring. And, as I explained to you the other day, when I made a brief argument here, as a result of that letter meetings were held between the Board and the producers and on October 11th the Board issued a circular setting forth its tentative proposals, and that circular is in as Exhibit "676" and it is reprinted in the book itself at page 15,500. Now, I just want to point out in passing - I have not referred to this in the written brief that I have filed - that we have at times criticized the constitution

of the Board and I only want to say this in connection with these Hearings which were held, to which I am now referring, Mr. Knode was formerly the Chairman of the Board. The first Hearings were heard by Mr. Cottle and Mr. Dingman. Then Mr. Cottle was required on important work of this Commission and he had to go away to the east. At one of the meetings, I think at which Mr. Cottle was still present, Mr. Andrew Smith from the Attorney General's Department was present.

MR. FRAWLEY: No, Legislative Counsel.

MR. MAHAFFY: That is a fine distincition.

MR. FRAWLEY: Oh no, it is more than a fine distinction. He is Legislative Counsel. He is one of the legal officers.

MR. MAHAFFY: One of the officers of the Crown. Legislative Counsel, my friend tells me, is the correct terminology. However, he was present. And why I am mentioning this, Sir, is to show that I do not think this matter is receiving the attention which the importance of the subject justifies. Mr. Smith, probably half jokingly, suggested that I was making submissions to the Board, and that, perhaps, I did not know what I was talking about because I was just a mere lawyer. I agreed with him in that, although I tried to be prepared so what I would say would be sensible. He, of course, is a lawyer too. The strange part of it is that that Board is constituted so that when Mr. Cottle is called away a mere lawyer, namely Mr. Andrew Smith himself, is added to the Board, and when we go on to continue our discussions before the Board the Board consists of Mr. Andrew Smith and Mr. Dingman. Mr. Cottle has gone. I suppose later Mr. Cottle will be back.

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I hope he will be. But this is not a satisfactory way of handling a problem which to us, in any event, means life and death so far as our industrial future is concerned. Now, I just add that in passing.

MR. COMMISSIONER LIPSETT: In the meantime Mr. Knode has ceased to be Chairman?

MR. MAHAFFY: He ceased to be Chairman before the circular letter of September 5th was sent out.

THE CHAIRMAN: Was he present at these meetings you are talking about?

MR. MAHAFFY: He is present at all meetings in his capacity as technical adviser to the Board. Now, if the proposals of the Board as suggested in Exhibit "676" were made effective by the Board the evidence shows that there are 12 gas-cap wells which supply gas at the present time to our plant. (P. 15,534) and those wells which supply gas to our plant under the proposal would be reduced to an aggregate daily production of 3,208,000 cubic feet of gas. That would be the total daily production from the 12 wells. (P. 15,535). Mr. Mayland, who is an experienced operator of wells in Turner Valley says that the individual gas wells could not operate on such a small allowable because they would not even pay the operating costs of carrying on their production activities and in that event, of course, Gas & Oil Products would get no gas.

MR. COMMISSIONER LIPSETT: Before you go on, how many of those 12 gas-cap wells are wells which you hold under lease providing that you were to drill wells?

MR. MAHAFFY: Well Sir, I would not want to answer that offhand. These were all wells - I think I am safe in saying this, that these were all wells drilled on

Crown leases. No, now there are some C. & E.

MR. COMMISSIONER LIPSETT: Perhaps you can give us a little clearer information on that after lunch.

MR. MAHAFFY: I can check that up. They are either drilled on C. & E. leases or on Crown leases.

THE CHAIRMAN: No matter where you got them there is no lease that would not contain a covenant for drilling?

MR. MAHAFFY: That is right, whoever the landlord happens to be, there was a drilling covenant.

MR. COMMISSIONER LIPSETT: And whether it is a private contract or whether you got the lease from the Crown, you are compelled to do this drilling?

MR. MAHAFFY: That is right, Sir, and these wells were drilled under those conditions.

MR. COMMISSIONER LIPSETT: Yes.

MR. MAHAFFY: They were not drilled by Gas & Oil Products but by various companies associated with Gas & Oil Products.

Now, then, if by some stretch of the imagination these individual well operators can continue their production on this basis of gas then the evidence is that with a throughput of 3,208,000 cubic feet that the Gas & Oil Products itself could not carry on that absorption operation with that small amount of gas. (Pages 15,539-40 and 15,570-71.) And consequently on two grounds the reduction to 3,208,000 would eliminate, as far as we are concerned, the production of natural gasoline. Now, at that same time the principal competitor of Gas &

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Oil Products, namely, the Imperial Oil and Royalite, could continue with the production of natural gasoline without any interruption due to the fact that the Royalite Oil Company happens to have and enjoys an exclusive contract for the sale of natural gas to the Canadian Western Natural Gas, Light, Heat & Power Company, which, as you know, distributes in Calgary and Lethbridge and other towns in between, and by reason of the fact they have that contract the Board takes the attitude that gas burned as fuel is not wasted, and they while at the same time we are in fact closed down they will continue to have available to them natural gasoline for use in their refining operations. Now, under all those circumstances Gas & Oil Products has made submissions to you and respectfully suggest that the Commission should recommend to the Provincial Government that the allowable production of gas from the gas-cap area should not be reduced as suggested in this Exhibit "676" nor should it be reduced below the allowables that are now in effect.

THE CHAIRMAN: Is that what you want or do you want a Conservation Board to give you a proper Hearing; one that is willing to take into account the equities and realities in connection with that field?

MR. MAHAFFY: Yes, I am coming to that, Sir. I am going to recite to the Commission, if I may, the reasons why I think you are justified in recommending to the Provincial Government that no change should be made and that certain things be corrected in the operations of this affair.

THE CHAIRMAN: Well, you see, as you put it to us, you are asking really for what is tantamount to a firm opinion that such and such should be done, after hearing

one side.

MR. FRAWLEY: And asking the Commission to weigh equities, as it were.

THE CHAIRMAN: Yes. It might be reasonable that you should say that we should recommend that nothing be done against you until there is a proper hearing, and the status quo remains. I do not appreciate the difficulty of having a full and proper hearing.

MR. MAHAFFY: I do not either, Sir.

THE CHAIRMAN: At any rate, the Conservation Board does not defend itself about that. It may be assumed that you are right that you have not had one, I suppose, on the evidence before us. But on the other hand to say that we should recommend a particular allowable, a particular allowable without the Board offering any evidence about it, I do not know, Mr. Mahaffy. Do you think we should?

MR. MAHAFFY: I think, Sir, I would like to go through the reasons why I say so. I am not concluding with that. That is not my concluding statement on the thing.

MR. FRAWLEY: I wonder, have you said all you intend to say about the absence of Hearings. I think the record might be a little clearer, if I might say so, perhaps for your own purposes, if you told us just what those Hearings were, as you call them, just what those Hearings were. So that I will understand the matter a little better. My friend rather glossed over that.

THE CHAIRMAN: That is Mr. Mayland's evidence, of course. He not only suggests he has not got a proper Hearing but the man he asserts is the main member is just out to destroy his plant.

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MR. FRAWLEY: That is true. It was rather of a general character, I think it is fair to say.

THE CHAIRMAN: But that is a startling generality.

MR. FRAWLEY: My friend's complaint really starts on the 5th of September. I mean specifically. Well, no, it is a long time grievance.

MR. MAHAFFY: I will tell you where my complaint starts. I objected to this with the utmost power that I had just about a year ago now and my learned friend, what he was afraid of I do not know, but he insisted that this section go in the Oil & Gas Conservation Act. Section 47, subsection 1.

MR. FRAWLEY: My friend says "My friend" with a wave of the hand, I suppose you are talking now of the whole Legislature.

MR. MAHAFFY: I am talking to you now.

MR. FRAWLEY: I am the Legislature at the moment.

MR. MAHAFFY: I think the Legislature lots of times does what it is told and I think this is one case.

MR. FRAWLEY: You flatter me.

MR. MAHAFFY: Section 47, subsection 1 reads:

" Unless it is otherwise expressly provided by this "Act to the contrary, any order or regulation which "the Board is authorized by this Act to make may be "made upon its own motion or initiative, and without "the giving of any notice, and without holding any "hearing."

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Now, that was one of the things, Sir, to which we took exception in the action which we took to upset the previous Conservation Act passed in the Spring of 1938, was that we had not been given a fair hearing before this scheme went into effect. And we had not. So this time they come along and say they can do everything without any hearing. It is a most iniquitous section. True, they have been holding hearings, but there is no guarantee that they have to continue to do so and there is no guarantee that they will be really satisfactory hearings. And then we come along - I am just a little bit off my scheduled programme here - but we come along and we look back at section 44, which is another terrible section. It says:

" Save and except only in cases where it is otherwise "expressly provided by this Act the Board shall have the "exclusive jurisdiction to examine, inquire into, hear "and determine all matters and questions arising under "this Act, and every action, decision, and order of the "Board with respect to any such matter or question "shall be final and conclusive and shall not be open "to question or review in any court, and no proceeding of "or by or before the Board shall be restrained by "injunction, prohibition or other process or proceedings "in any court or be removable by certiorari or "otherwise into any court, nor shall any action or "proceeding be brought against the Board or any member "of the Board or any officer or employee of the Board in "respect of any act or thing done in purported pur- "suance of this Act."

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So all they have got to do is purport to do something in pursuance of the Act and they say "We cannot touch that."

THE CHAIRMAN: The Legislature did not share Mr. Ray's views as to the value of judicial examination and interpretation.

MR. MAHAFFY: No, apparently they did not think much of the judgment or the ability of the courts to deal with things that might arise.

THE CHAIRMAN: However, Mr. Mahfffy, assuming this legislation is all wrong and there should be an entirely new set-up for a Conservation Board in this Province, and assuming, accepting the evidence which Dr. Frey has given, we are prepared to make recommendations along that line. Assume all that for the moment. What have you to suggest should be done about you by this Board in the way of recommendation?

MR. MAHAFFY: I have that question in mind, if I may delay a yes or no answer until I go through the balance of my argument here.

THE CHAIRMAN: Yes, those sections are very far-reaching.

MR. MAHAFFY: I will refer to them again.

THE CHAIRMAN: They are certainly quite out of line with what Dr. Frey says is proper conservation approach to a field in which there are vested interests and divided ownership. There is no doubt about that at all. If we happen to accept his evidence we would certainly have something to say about that. If we happen to accept the evidence on that. That is the effect of what you have put forward, that at no time have you had a fair and proper hearing

and a true consideration of what has been put forward will-----

MR. MAHAFFY: I do not want to - if I may be excused for interrupting - I do not want to go just quite that far.

THE CHAIRMAN: I think your client does.

MR. MAHAFFY: No, I do not think so, Sir. I mean I want to be fair about this thing.

THE CHAIRMAN: I am speaking about his evidence before us.

MR. FRAWLEY: That is why I thought my friend should tell us about these hearings.

MR. MAHAFFY: For example, I was personally - perhaps you do not mind if I say this, in response to the letter of September 5th I communicated with one of the members of the Board and said we would like to make representations, as they had suggested we might wish to do. An appointment was arranged, I think it was on the 17th of September, and Mr. Cottle and Mr. Dingman were there. Mr. Knode, the technical adviser to the Board was there, and they listened to us very carefully and gave us all the time we wished to put forward our views about this particular thing. Now, I do not want to say, and it would be unfair for me to say that we were not given a fair hearing on that day, because we were. But what I have objected to-----

THE CHAIRMAN: I am speaking now from memory, but I thought your client had said in effect - now, I have not read this part of the evidence recently - that he had said in effect "Knode is the whole Board."

MR. MAHAFFY: That is right, Sir.

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THE CHAIRMAN: And that he is out gunning for him and he hopes to destroy his plant?

MR. MAHAFFY: That is right.

THE CHAIRMAN: That is not what you are saying now.

MR. MAHAFFY: That is a different thing than for me to say we have had no hearings at all because we have had some.

THE CHAIRMAN: I said proper hearings. If you are heard by people merely sitting there and hoaring you and who are out to destroy you, you have not had a proper hearing.

MR. MAHAFFY: I am sorry, I was at cross-purposes with you.

THE CHAIRMAN: I do not say we accept that evidence. I am just saying what is in the book, as I remember it, and I have not read it recently.

MR. MAHAFFY: That is absolutely right, Sir.

THE CHAIRMAN: I stand subject to correction about it.

MR. FRAWLEY: I am told that Mr. Mayland was not at that particular meeting you are now referring to.

MR. MAHAFFY: I would not want to say whether he was at that one or not. I think he went to all the meetings. But, in any event, what I was objecting to just in passing was the fact that then Mr. Cottle leaves the Board. He has more pressing engagements, and a new man, Mr. Andrew Smith, who two weeks before told me that a lawyer knows nothing about this sort of thing, and he himself is a lawyer and he goes on the Board as a member, and then I have to go back, or we have to go back and tell the whole story all over again,

and frankly, I do not know where we are at with them.

MR. COMMISSIONER LIPSETT: Mr. Smith did hear the whole story over again when he went on the Board.

MR. MAHAFFY: Yes, I think he heard the whole story over again. Now, Sir, I am ready to go on but I am wondering if you would like to adjourn before I continue with this.

THE CHAIRMAN: You are starting a new phase?

MR. MAHAffy: Yes.

THE CHAIRMAN: Then we will adjourn.

(At this stage the Hearing was adjourned until 2:00 P. M.)

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2.00 P. M. Session

MR. FRAWLEY: Mr. Chairman, if I may interject for one moment, in Exhibit "683", which is the compilation of all the Provincial Statutes which we tried to gather together, I had, at the time this Exhibit was put in, another British Columbia Statute which inadvertently was not included. It is the famous "Price Control Statute" and I thought that should be included as well as the others.

THE CHAIRMAN: Oh, yes.

MR. FRAWLEY: So if I just put it in as part of Exhibit "683" and no more ado about it.

In the Exhibit volume there is a list of these and Mr. Cutler might correct his list in the Exhibit Volume which is Exhibit Volume 25, just to include that under the heading of "British Columbia".

THE CHAIRMAN: Yes, that can be done. All right, Mr. Mahaffy.

MR. MAHAFFY: Mr. Chairman, I had just reached the point when we adjourned of submitting the reasons why we feel that the suggestions we were making to the Commission are practical, sound and consistent with the principles of conservation.

THE CHAIRMAN: You are referring to some part of your brief, page?

MR. MAHAFFY: I am on Page 10 now, sir.

Now Dr. Frey who gave evidence out of the benefit of his experience to the Commission with respect to conservation has said that any scheme of conservation must involve practical and economic considerations as well as theoretical applications. He said, you cannot put these various things into separate compartments, separate them, as they all

have to be considered and a thorough consideration of all of the equities given.

The gas cap area of the Turner Valley field, as I have mentioned this morning, was developed at tremendous expense to the companies involved and that development was done with the encouragement, and as My Lord has pointed out, in fact with the assistance, one might say, of the Dominion and Provincial Governments, and it should be noted, sir, that during all those years of the early development of the field the Dominion Government, which was at that time in control, was competently and adequately advised by geologists of the highest standing. There was no suggestion at any time that this development on the gas cap should not carry on, no official suggestion that I ever heard of, that the flank would produce crude oil and therefore that portion of the field should be drilled and through those conditions Gas & Oil Products Limited and the associated companies, as I have described them, were pioneers in the development of the southern end of the field when, as Mr. Mayland pointed out, Mercury Oils and all these various companies, went into the south end of the field and they were practically considered "wildcats" but as we know, the wells were brought into production and this whole setup on behalf of which I am speaking, developed from that.

Now those are equities and those are practical and economic considerations which must be considered in the view of Dr. Frey as I understood him in the working out of any scheme of conservation and I would like to say here that I think it is perhaps most unfortunate that Mr. Knode, the technical adviser to the Board and

former Chairman of the Board, did not see fit to indicate his desire to discuss this problem with the Commission and outline his views with respect to the equity and the practical considerations which are involved in the problem. However, this was not done nor did any member of the Conservation Board appear at the hearing and question in any way the general principles enunciated by Dr. Frey.

MR. FRAWLEY: The Board after all, Mr. Chairman, they did not come; I was wondering what status Mr. Knode would have as such.

MR. MAHAFFY: Well, of course, it is very easy for my learned friend to say that now but Mr. Knode is the moving spirit in this thing. He was the Chairman for a long time and he is the technical adviser of the Board and I assume that the Board is taking his advice on matters pertaining to conservation. If they are not, then I do not know where they are getting their technical information with respect to the operation of the scheme of conservation.

MR. FRAWLEY: I am only really interrupting you and I really should not intervene to do that perhaps; I just thought perhaps Mr. Knode should come as Mr. Knode and not as technical adviser; I do not know. That remark might be just a little out of place.

MR. MAHAFFY: I may be wrong but I think it is too bad, he being the man who holds the strings in his hands, that he has not been here. That is my submission. Now just in that connection, sir, ---

THE CHAIRMAN: You must remember, Mr. Mahaffy, we said we would give you a subpoena for him.

MR. MAHAFFY: Yes.

THE CHAIRMAN: We were not going to compel him

to say what advice he had given the Board but you had full opportunity of having him here and asking his views about anything.

MR. MAHAFFY: Well ---

THE CHAIRMAN: We do not want you to take the position you were shut out because you were not.

MR. MAHAFFY: No, I am not taking that stand, sir, but I do not think I would have been able to have got very far if I could not have asked him things within the limits of the privileges which you suggested.

MAJOR LIPSETT: I suppose you put it, Mr. Mahaffy, that it might have been somewhat of an advantage if we had now got the general principles and the general schemo adopted by the Board, the Conservation Board?

MR. MAHAFFY: Well, of course, past actions speak for themselves but I am in the peculiar position that I am anticipating to some extent what might happen in the future, as evidenced by Exhibit "676" but what I would like to do now, the Chairman has commented with respect to other witnesses and the same applies to Mr. Knode, I am not gainsaying that and the man is entitled to change his opinion but I would like to read one or two excerpts from the evidence taken before the Agricultural Committee of the Legislature of the Province of Alberta at the 1938 Special Sessions in November of 1938.

MR. FRAWLEY: Mr. Mahaffy, if I might interrupt, can you tell me, do you recall if the proposal, the document later in time than that Exhibit "676", whether it was filed as an Exhibit?

MR. MAHAFFY: Exhibit "676" is the last thing that I know of, Mr. Frawley.

MR. NOLAN: Exhibit "676" is the second one.

MR. FRAWLEY: I wanted to be clear about that, that, I thought Exhibit "676" was the earlier one.

MR. MAHAFFY: No, Exhibit "676" is the circular suggesting that the gas cap be pro-rated to the gas production in the crude area.

MR. FRAWLEY: The large document with the schedule attached?

MR. MAHAFFY: Yes.

MR. FRAWLEY: That is right.

MR. NOLAN: It was called a notice, dated the 11th of October, 1939.

THE CHAIRMAN: The first was Exhibit what?

MR. FRAWLEY: Yes, let us get this.

MAJOR LIPSETT: It is Exhibit "595".

MR. FRAWLEY: Exhibit "595", the circular letter of the 5th of September, 1939, yes, that is the first one, and then the second circular letter of the 11th of October, 1939 is Exhibit "676".

MR. MAHAFFY: Now, sir, this evidence was taken by a reporter in Edmonton last year when this new Act was being considered and I must confess that it is very poorly reported if I may say so. I certainly know a lot of the English attributed to me, I never used it.

MR. FRAWLEY: You are putting it very mildly. It was badly reported.

MR. MAHAFFY: Nevertheless the gists of the thing are here and there are a few parts of this I would like to read to indicate in any event at that time, about 12 months ago, Mr. Knode's viewpoint with respect to this situation,

MR. [illegible]: [illegible] "VAN" is the second one.

MR. [illegible]: [illegible] to be clear about that.

[illegible] I thought [illegible] the earlier [illegible].

MR. [illegible]: Or, if [illegible] "VAN" is the [illegible]

[illegible] that [illegible] is pre-dated to the [illegible]

[illegible].

MR. [illegible]: The [illegible] document with the [illegible]

[illegible] "Bedford".

MR. [illegible]: Yes.

MR. [illegible]: But [illegible] it.

MR. [illegible]: [illegible] called a cotton, dated [illegible]

Lith of [illegible].

THE CHAIRMAN: The [illegible] document [illegible]

MR. [illegible]: Yes, let me [illegible] that.

MAJOR [illegible]: It is [illegible] "BOS".

MR. [illegible]: [illegible] "LOW", the [illegible] letter

of the bit of [illegible], [illegible], that is the first [illegible],

and then the second [illegible] letter of the [illegible] [illegible],

LOW is [illegible] "over".

MR. [illegible]: [illegible] [illegible] been

[illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] that it is very [illegible],

[illegible] [illegible] [illegible] [illegible]

[illegible] the [illegible] [illegible] [illegible] [illegible].

MR. [illegible]: [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible].

MR. [illegible]: [illegible] [illegible] [illegible]

[illegible] here and there are [illegible] [illegible] [illegible]

[illegible] to indicate [illegible] [illegible] that [illegible], [illegible]

[illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

On Page 4, in the answer, I believe he was being questioned at this time by Mr. Plotkin.

MR. FRAWLEY: Was that ever filed as an Exhibit?

MR. MAHAFFY: No.

MR. NOLAN: It has been referred to and parts of it have been read. I remember Mr. Plotkins reading part of it once.

MR. MAHAFFY: Mr. Nolan has suggested and I think he is absolutley right, sir, that I should explain a little further exactly what I am reading from. The Government called a special session in November for the purpose of passing a new Conservation Act. The various parties interested in the Industry were invited to attend and the Legislature as a whole went into committee called the Agricultural Committee of the House and heard evidence.

THE CHAIRMAN: As to what?

MR. MAHAFFY: With respect to conservation.

THE CHAIRMAN: The date.

MR. FRAWLEY: I do not think he has even dated it but I think we can give you a good idea as to the date of that from the date of the Statute.

MR. MAHAFFY: It was in November, 1938, and if I remember, sir, it was about the 20th of the month.

MR. FRAWLEY: The Statute was assented to on the 22nd of November, 1938.

MR. MAHAFFY: This then would be some time between the 15th and the 20th of November, 1938. Mr. Knode said in one place here on Page 4:

" You must realize that no Board "is trying to bring about conservation, proration in

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"the Turner Valley field until the individual has with-
"drawn from that reservoir. The individual and the
"company and everybody else must go out of the field.
"I take it the Board has an interest down there, and
"we could take this individual case and say, "Well
"this fellow has a particular investment there we must
"protect that against the rest of the field. We could
"fix a time of our own as the Imperial Oil or the
"Anglo Canadian does."

That part, sir, makes no sense at all.

"If the B. A. or anybody else owns part of the oil that
"is their business -- certainly not the Board's business."

Then later on on Page 8, Mr. UnWin, one of the members of the Legislature said this:

"I would like to ask of the Board are you taking into
"consideration moneys invested by any person, or is it
"straight conservation of the field?
"MR. KNODE: As I see the Board's duties
"under the Act you have no right to investigate what
"a man has put in there, in order to make it come out
"even. Our business is conservation."

Then, sir, this is another point that I will address myself to and if you do not mind I will read the quotation now while I have it before me, in connection with crude gas. On the same page, at the end of Page 8, the witness was then being examined by myself:

"Q Now, then, from the point of view of the gas, in
" September I believe you reached the peak of your
" allowable which was some 56%?
"A I think that that was--yes, that was about the rate,
" 56%.

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"Q At that time you reached the peak of your market
" demand, at that time how much gas was being burned
" in the crude wells?
"A I don't recall. I imagine around 90,000,000 cubic
" feet.
"Q Was natural gasoline being absorbed from that gas?
"A No.
"Q And is it fair to say then, that, in allowing the
" crude wells to produce to the market demand,
" 90,000,000 cubic feet of natural gas was burned
" with your approval?
"A Yes.
"Q And no steps were taken to have that natural gas
" put through absorption plants?
"A No.
"Q Would it be fair to say, Mr. Knode, that the amount
" of gas wasted in the crude wells was of no consid-
" eration to the Board?
"A It certainly was a consideration.
"Q In what way?
"A In this way. It is recognized as waste by the Board.
" You must recall I suppose that actually, in effect,
" there was no way of forcing these plant operators
" to go out and get that gas--had no way of forcing
" them to carry out orders on their own particular
" wells. I don't think it would be at all possible
" for the Board under the existing Act, to make
" these people do anything without a long series
" of court trials, and I don't see that we should,
" in two months, they expect to do the thing to

" to remove a thing that has been existing down
" there 14 years, and nobody has done a damn thing
" about it.
"Q I am inclined to agree with you, we should not
" do this thing in too big a hurry.
"A You haven't been in too big a hurry."

MR. NOLAN: That seems to read all right.

MR. HARVIE: It sounds like him.

MR. MAHAFFY: Then, sir, at Page 13, Mr. Knode was being questioned by Mr. Duggan, a member of the Legislature, ----

MR. FRAWLEY: Leader of the Conservative Party.

MR. MAHAFFY: Leader of the Conservative Party, yes, I will skip the first part but the question at the bottom of Page 13:

"Q This is a one-sided question, and it will take
" a long time to ask all these questions and get
" the answers, so if the Chairman will be good
" enough to give you that, then one other point,
" Mr. Knode, Are we to understand your inter-
" pretation of the functions of the Board are
" restricted to the one question of bringing about
" conservation without any regard to its effect on
" individual producers -- without any regard to the
" benefits which might accrue to the major oil
" companies, without any regard to the amount of
" finances in any particular province? In other
" words, are we to understand that you are not
" interested -- have no functions to perform with

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" respect of anything outside of the bald question
" of conserving gas in Turner Valley?
"A I think that my own personal dealing were
" otherwise. The Act would not allow the Board
" to finish any other way, it appears to me."

Now that, sir, is terrible transcription. I think we can take out of it that perhaps he thought his personal feelings were otherwise, that the Act would not allow him to do it any other way, function any other way is probably the word.

"Q I do not know your name, Sir?
"MR. DUGGAN: Mr. Duggan.
"MR. KNODE: All right, there is a difference.
" I will call you Dugan.
"Q Would you mind putting in the other g?
"A It is my opinion that no conservation Board can
" consider anything except the manner, or mere fact
" of conservation.
"MR. KNODE: I don't see any board would be
" justified or could stand very long that would
" consider an individual, or a company, or anybody
" else as having particular rights in a particular
" field. His rights are measurable just the same
" as anybody elses.
"MR. DUGGAN: Yes, and is this a right
" assumption that it is conceivable that your
" decisions might do a grave injustice to many of
" the small operators and that might be the result.
" What I am trying to get at is that you have no
" objections -- you are not concerned about the

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" effect. Is it conceivable that your decisions
" might do an injustice to many of the operators
" now?"

And then Mr. Anderson injected "Do you mean financial?"

"MR. DUGGAN: Financial, yes."

And then Mr. Knode's answer:

"A Well, no I can't conceive that a proper order can
" do an injustice, because certainly the man's
" business in the field is going to be considered
" on each order. Now we cannot go into every
" statistic to see how much he would invest. That
" is absurdity. What if he drills a well and has
" a lot of trouble and instead of costing $150,000,
" it cost $450,000, is it your intention then that
" the Board should take into consideration that it
" cost him three times as much as it should? Would
" not we be doing him a financial injustice if we
" didn't allow him to pay that well out?
"Q No, what I am getting at is this. As I interpret
" the powers which you gentlemen will hold, the
" Board, ----'

Here again it is wrong, sir;

' with caucus at any time close down any well."

MR. NOLAN: That sounds all right.

MR. MAHAFFY: Do you think that sounds all right?

" If you have power to buy that well, or rather
" to sell it.

"MR. KNODE: Yes."

That does not carry us far, sir, but I think I can skip some of this.

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Mr. Duggan went on to point out to him that the Gas Act gave the Board power to buy wells and close them down and that sort of thing and ---

MAJOR LIPSETT: Was that that they would buy out the wells for the purpose of closing them down, that Draft Bill, did it provide that?

MR. MAHAFFY: Yes, but I am coming to that, sir. The way it works out is they close the well down first and then they buy it out at its then value, that is why the compensation sections are so ridiculous.

THE CHAIRMAN: They buy it as a closed well?

MR. MAHAFFY: That is it, sir.

MR. FRAWLEY: I didn't hear that one.

MR. MAHAFFY: I say the compensation, the effects of the compensation sections of the Conservation Act are that the well is closed down and then the Board has the right to buy it at a closed down value. You will not question that.

MAJOR LIPSETT: Compensation for the hole in the ground.

MR. MAHAFFY: That is the way it looks to us.

MR. COTTLE: I think you will find, Mr. Mahaffy, the purpose of the right to purchase a well is to facilitato the repressuring programme.

MR. MAHAFFY: The Statute doesn't say that, Mr. Cottle.

Well Section 55 of the compulsory purchase section says:

" Incidentally to the conservation of oil
" resources or gas resources or both or to the

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" repressuring of any oil field, gas field, or
" oil gas field, and for the purpose of carrying
" out any order or regulation made by the Board
" in relation to such conservation or repressuring
" the Board is hereby authorized and empowered to
" purchase"

and so on.

MR. COTTLE: Compensation is not mentioned there in that section.

MR. MAHAFFY: Now in the same section, sub-section 4 says:

" In determining the price to be paid by the Board
" for any property, the arbitrators shall ascertain
" the amount of money at which the property would
" be accepted in the payment of a just debt and in
" so doing shall not take into account any loss of
" production occasioned by any order or regulation
" of the Board made pursuant to this Act."

(Go to Page 16,282)

Or, in other words, they have put in their order. They have cut down our production and then they say in valuating "Well, do not take into consideration the loss of production that has been sustained by virtue of the Order."

MR. COTTLE: There are other compensation sections. That does not mention compensation as such, that is the only point I am making.

MR. MAHAFFY: There is another compensation section, that is quite true but thus far it has been a completely innocuous section. It has not been acted upon. And I am coming to that in another part of my argument. Mr. Duggan finally said to Mr. Knode, he said "Now, the statement I am trying to convey to you is this. Are you interested, is it your responsibility to see that no undue financial injustice results to these people? Is that your responsibility? A. Well, as a moral obligation, yes. Q. That is not good enough. What I am asking Mr. Knode is is this Legislature under obligation to set up further machinery to protect the interests of the independent producers? A. No Sir, I do not think so. No, Mr. Duggan. Q. So you think under the provisions of this bill you have enough power to see that justice is done to them all? A Yes, I think so. I think there is plenty of room under that bill. MR. DUGGAN: Well, I hope that is so. I do not see it yet."

Now, just one or two more and I will pass on from this. These quotations are not mentioned in my written brief, Sir.

THE CHAIRMAN: And they have not been put in evidence either.

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MR. MAHAFFY: No, they have not, Sir. But I think, being a record of the most important Committee of the Legislature, that perhaps I am entitled to read from it as I would from a text-book on this subject.

MR. FRAWLEY: What I was going to suggest, after Mr. Mahaffy is finished, is that it is almost impossible to expect him to read everything that Mr. Knode said and I am quite sure if the Commissioners are going to have regard to what Mr. Mahaffy is now saying you may want to look at all the document and, perhaps, it should go in, and that would be the simplest way.

MR. FMAHAFFY: Frankly, I am trying to be very fair in my quotations. I am not taking individual questions.

THE CHAIRMAN: Well, of course, so long as no one has any objection we won't make a point of it, Mr. Mahaffy. But it is not the usual time to introduce evidence in your argument. What Exhibit Number will that be?

MR. FRAWLEY: Exhibit "730".

(EVIDENCE TAKEN BEFORE THE AGRICULTURAL COMMITTEE IN CONNECTION WITH BILL NO. 1, AN ACT FOR THE CONSERVATION OF THE OIL AND GAS RESOURCES OF THE PROVINCE OF ALBERTA; 1938 SPECIAL SESSION, IS NOW MARKED EXHIBIT "730".)

THE CHAIRMAN: All right, Mr. Mahaffy.

MR. MAHAFFY: Then, Sir, on page 157. I am not just exactly sure who is questioning here but I think it was Mr. Unwin again. The question was:

"Q Regarding casing-head gas, if, as Mr. Mahaffy says,
" this absorption plant is put out of business, what
" I want to know is what effect is that going to have

" on pro-ration. I am thinking more of the
" effect on our farmers if that absorption plant
" were put out of existence, does it mean that the
" pro-ration scheme will cause our farmers to have
" to pay pro-ration because, perhaps, they run the
" tractors?

MR. NOLAN: And there is no mistake in that transcript. I was there.

MR. MAHAFFY: The answer is:

"A We certainly have no plans to put anybody out of
" business, that is any plant. Now, for your informa-
" tion I will tell you I clearly remember oil selling
" in East Texas at 6 cents - the price of gasoline
" fluctuated very slightly - in other words, it is a
" refined product and the value is approximately the
" same no matter what the raw product, at least that
" is what those fellows told me, but I can't see the
" economic problem that you are talking about
" arises due to pro-ration. It might be there - that
" is true - we might go through a distress period
" where we would have slightly lower price on gasoline."

The only reason I am reading that question is right at the beginning he said

" We certainly have no plans to put anybody out of
" business."

Then Mr. Unwin follows up with another question:

"Q Do I take it from the Board this absorption plant
" would not be put out of business?
"A Well, I do not say that. I think for the good of
" the field the two absorption plants should be put

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" out of business. Why, the Government should see
" that they should be put out of business, in other
" words, Mr. Unwin, you must realize this absorption
" plant is a secondary operation in an oil field."

Now, Sir, there are four plants. He suggested two should be put out of business. Nobody asked him which two.

THE CHAIRMAN: You have no doubt?

MR. NOLAN: I am sure it was not ours.

MR. HARVIE: And I am sure it was not ours.

MR. MAHAFFY: I am sure it was not ours.

We might as well make it unanimous.

MR. COMMISSIONER LIPSETT: Mr. Mayland in his evidence more or less, follows that up by saying during the time Mr. Knode was Chairman his object seemed to be to put his plant out of business.

MR. MAHAFFY: That is right.

THE CHAIRMAN: He expressly told him so.

MR. COMMISSIONER LIPSETT: Yes, he said he told him so.

MR. MAHAFFY: And then we have Mr. Knode in evidence saying in so many words that two of these plants should be put out of business. I make those quotations, Sir, to indicate that twelve months ago at least I think they indicated, that Mr. Knode felt that he only had one duty and that was to put in the narrow, stricter type of conservation, as we sometimes describe it; that he had no consideration for the individuals, companies or equities in the field. Personally, I know of nothing that has happened since that causes me to think he has changed his mind and I submit that is not the type of conservation which Dr. Frey, for example, would recommend should be put

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into effect.

MR. COMMISSIONER LIPSETT: Just one more question on that, Mr. Mahaffy. Assuming that that was the policy to put the absorption plant, any absorption plant out of business, does the Compensation Section provide for compensation in a case like that, perhaps you will be dealing with it later.

MR. MAHAFFY: I am going to deal with the Compensation Section later and, perhaps, we could touch on that at that time.

I would like to point out to the Commission something that is probably self-evident, that the whole objective is two-fold. First, it is to preserve reservoir energy, thus to allow of the maximum recovery of crude oil from the formation,and second it is to conserve natural gas as a fuel. The principal concern of the Board, that is the Conservation Board, has been the first, namely, preservation of reservoir energy. The best proof of that statement is, from what I have read in the transcript and what is already in as evidence before the Commission, that natural gas from the crude oil wells is being burned in the flares of Turner Valley to-day and the Board has not made any Order requiring otherwise. Now, I wish to submit that the evidence given before this Commission conclusively establishes that withdrawal of gas from the gas-cap area does not and will not adversely affect in any way the total ultimate recovery of oil from the crude oil area. I would like to repeat that. I am submitting that the withdrawal of gas from the gas-cap area is not going to affect in any way the total recovery of crude oil from the crude oil area. Now, in this connection there are

two theories. One theory is that the field is a common reservoir or pool in which there is free movement of gas and oil in formation. The other theory is that although the field is a reservoir, because of the nature of the limestone formation, the extremely low permeability of the limestone and the presence of many dense or tight areas, there is little if any movement of gas and oil in the formation. Now, the latter theory gains by far the bulk of support from the experts who have testified before this Commission. Dr. Link and Mr. S. J. Davies, who gave evidence for the Imperial group, who incidentally are our chief market competitor, had this opinion. I am not going to read from it. I have quoted the pages, on page 11 near the last part of the page, the references to their evidence where they make that statement. (Pages 308, 579, 580, 582, 584).

Then Dr. Shaw and Mr. Gill, two outstanding experts who were called to give evidence on behalf of Anglo-Canadian Oils and associated companies, and those companies were the second largest producers of crude oil in the field and surely if anybody might be opposed to us taking gas from the gas-cap you would expect them to be the people - but Dr. Shaw and Dr. Gill subscribed to this view, and here again I have quoted the pages, Sir. (Pages 1,063 and 1064, 1096-7 and 1110.)

I think I have already some weeks ago read that evidence to you. Now, in view of this evidence from these experts, should the important industry which is operated by Gas & Oil Products Limited be junked without compensation?

THE CHAIRMAN: You have mentioned Dr. Link

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and Mr. Davies and Mr. Shaw and Mr. Gill.

MR. MAHAFFY: I think Dr. Boatright's evidence, frankly I did not read that because my recollection was that he made no reference to this particular point.

MR. FRAWLEY: Oh yes.

MR. MAHAFFY: I may be entirely wrong on that because I have not read his evidence carefully.

MR. FRAWLEY: He certainly went on the other side. He said there was migration there.

MR. MAHAFFY: I expect he would hold that view because his partner Mr. Knode holds the same view.

MR. FRAWLEY: Oh, I would not say that.

MR. MAHAFFY: They are working together and I think, perhaps-----

MR. FRAWLEY: He was called by me before this Commission and he gave that evidence and there it is.

MR. MAHAFFY: I may be wrong but usually when an opinion comes out of a law office it is the collective opinion and I would rather expect Dr. Boatright would express the same view as Mr. Knode, that there is free movement in that structure, but I say the bulk of the evidence does not show that.

MR. FRAWLEY: Does not show that there is migration?

MR. MAHAFFY: Yes.

MR. FRAWLEY: No, I do not know. After all, we have something to help us. We have the deliberations of the Commission, and it, perhaps, might throw some light upon it, as to whether or not their finding with respect to the life of the field does not in some way bear upon that.

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I do not know.

MR. MAHAFFY: Even these gentlemen say there is some movement. There has got to be some movement. When you drill a well oil and gas move into that hole. But they make it very plain that it is very slight and that what they do make plain is that withdrawal of gas from the gas-cap is not going to hurt one iota the withdrawal of crude oil from the flank in Turner Valley.

MR. FRAWLEY: Is it not pretty well the case of those who belong to the group think there is permeability and those which think there is very, very low permeability?

MR. MAHAFFY: Well, that is about it. But I say that the bulk of the opinion is that because of low permeability and the tight spots and the nature of this formation that withdrawal of the gas from the cap does not hurt the crude flank. What I am saying is this: Should our business be junked and should the production of a valuable product, namely natural gasoline, be eliminated because the technical adviser to the Board holds an opposite view to that to which I have now given expression. After all, it is only one man's opinion. Now, insofar as the conservation of the gas as a fuel is concerned, practically all gas used for this purpose is withdrawn by the Royalite Oil Company from the Northern and Central portions of the field, and here again the same principle applies, the withdrawal from the South end, we submit, does not affect this source of supply because of low permeability of the formation and the tight spots and the faults that are known to exist in it.

Now, for these reasons we

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submit and we contend that if the gas-cap wells in the south end of the field are closed in, as now suggested by the Board, such action will not help in any way the crude oil production area, nor will it benefit the conservation of gas as a fuel. And if that is so why should they be closed in. But assuming that this view is wrong. Assume that the argument I have just put is incorrect and the other view is accepted, namely, that there is free movement of gas in the formation, free movement of gas and oil, then we say the suggestion the Board has made in the proposal, Exhibit "676" is most inequitable. It is quite clear that if the Board acts on that suggestion, which they may do as soon as this Commission has arisen, then the effect, the practical result-----

MR. FRAWLEY: Now, they might do it tomorrow or this afternoon.

MR. MAHAFFY: Sure, and I wish they would, make up their minds about something. The practical effect would be the closing in of the oil wells located on the south portion of the gas-cap area. There is no question about that. Now, if there is free movement-----

THE CHAIRMAN: Do you at all anticipate you will have an Order as soon as this Commission is out of the way?

MR. MAHAFFY: I do not know, Sir. But it is quite likely.

MR. FRAWLEY: "Likely" is not the word, is it? You are not surely seriously suggesting it is likely as soon as this Commission has arisen and this Commission is out of the way that the Board will make an Order?

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MR. MAHAFFY: I say it might happen.

MR. FRAWLEY: It might happen. It is rather an ugly word to say it is likely because the Commission has arisen.

MR. MAHAFFY: Mr. Smith and Mr. Dingman and Mr. Knode had all the arguments on this point some little time ago, two months ago.

MR. FRAWLEY: I quite agree they could make an Order any time, to-day or to-morrow.

MR. MAHAFFY: They are holding us on the end of a thread and we expect them to use the knife any time. It is not a pleasant position for a company that is trying to carry on a stable business to be in. What I was going to say, Sir, is that if this suggestion is carried out there is no question all the wells in the southern end of the gas-cap will have to be closed down. And if we assume that there is free movement of gas and oil in the structure then it is obvious that the gas underlying the oil wells, which wells will be closed down, the gas under our property is bound to do one of two things. First, it will be withdrawn from the formation through the wells located on the northern and central portion of the gas-cap, owned by the Royalite Oil Company and it will be sold by the Royalite Oil Company to the Calgary Gas Company; or second, if it does not move in that direction then it will be used by the producers of crude oil for the purposes of lifting their oil to the surface on the flank of the field and then this gas will be burned, because in the view of the Board it has performed its function. Now, if we assume there is free movement in the structure one of

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these tho things is going to happen to our gas. In either of these cases the Board has taken no steps to provide for compensation to the operator on the gas-cap nor to the operators of the absorption plant which are dependent on that gas produced at those wells. No step has been taken by the Board nor suggested by the Board to permit of those wells sharing in the sale of gas for domestic and commercial consumption in Calgary. And if the suggestion of the Board is acted upon the Royalite will get this gas for nothing. No step has been taken by the Board to indicate that in its view the operators of crude oil wells should compensate the operators of the gas-cap for the gas-cap's gas used to lift the crude oil.

Now, Sir, I come right down to the Compensation Section. Mr. Cottle has pointed out there is another Compensation Section in the Act and that is quite true. It is Section 17 of the Conservation Act of 1938. It was Chapter 1 of the second Session held in November. And under Section 17 the Act makes provision for the necessary machinery to provide compensation. But the Board has taken no step to make any use of that machinery for the benefit of the Gas & Oil Products and associated gas-cap producers. The Board has not given any indication that it intends to do so and the Board clings to the view that it is not concerned with individuals nor with losses which may be sustained by individuals as a result of the Board's Orders. It any event, Section 17, perhaps I should read the first paragraph, which will illustrate exactly what I am saying, because sub-section 1 of Section 17 says:

" Within six months after the date upon which this "Act comes into force, and at any other time upon the "direction of the Lieutenant Governor in Council, the "Board shall proceed to prepare a scheme or schemes for "the provision of compensation for persons who are injured "by reason of any conservation orders made pursuant to "this Act, and submit every such scheme to the Lieutenant "Governor in Council."

Then it goes on, and it is a very permissive section from then on. We strenuously objected to the wording of this Section when it was before the Agricultural Committee. After the Board makes that report to the Governor and, incidentally, so far as I know, no such report has ever been made, and a year has gone by and no scheme has been propounded within the six months as required by this Section. But even if it had been then it says the Governor may do this and the Governor may do that. There is nothing saying that they shall do this and they shall do that and the result is that eleven, twelve or thirteen months have gone by since the Act was proclaimed and certainly we know that nothing has been done.

THE CHAIRMAN: Does that other Section, referred to as the certiorari Section, does that prevent any steps being taken against the Board to compel them to promote that compensation scheme?

MR. MAHAFFY: Read as I read it, it does. I am not prepared to say, Sir, that still there is not some way open by which a litigant could successfully get at these people. Even in spite of these barriers. As Mr. Nolan points out to me, there is the recent amendment to the

Judicature Act too, which further complicates the question of suing. But the thing I most object to in this Section 44 - I think the whole thing is wrong, mind you - it is the business of not being able to sue. But the most damaging part of the Section is the last two lines, where the Legislature has provided that we cannot sue for any act or thing done in purported pursuance of this Act. It may not be within the terms of the Act at all. But they say "Well, we purported to do it under the Act" and the Section says we cannot take any legal action to correct that. It is the most iniquitous Section I think of all the iniquitous Sections we have got in any of our Statutes these days.

MR. COMMISSIONER LIPSETT: The other case, that is the point about compensation, is leaving something undone that they should do.

MR. MAHAFFY: That is right. And then this Section says that we cannot take any proceeding to get them to do it.

MR. FRAWLEY: You can get a declaratory judgment.

MR. NOLAN: And if you do you do it against the most strenuous efforts of all the officers of the Crown gathered together at one time. Because I know. I have tried it.

MR. FRAWLEY: That is another sort of Statute. Why don't you appeal it?

MR. MAHAFFY: Then I wanted to mention in connection with 17, which is the Compensation Section, the other Section which I mentioned just a moment ago, Section 55, which gives them the right to acquire wells for conservation

purposes of anything of that kind and particularly subsection 4, which I mentioned, the result of which is that they make your well worthless or practically so, and then subsection 4 gives them the right to purchase it at its depreciated value. Now, what we are saying, Sir, is surely the Board should have come forward, especially when the Statute placed a limit of six months on them doing so, with a scheme which would show the Gas & Oil Products exactly what compensation was going to be paid in return for the losses that it has sustained or may sustain.

THE CHAIRMAN: Can they do anything now, the time having elapsed?

MR. MAHAFFY: That is another point of whether the whole Section now has not gone, it is null and void; This is not a legal argument but I am inclined to think that they, having failed to comply with that Section, that probably their whole scheme now is bad. Because compensation should be and is an integral part of that Compensation scheme, and that has not been complied with. The only thing that might save the thing is the wording. It says within six months after date the Board shall proceed to prepare a scheme or schemes for compensation. Now, it says within six months after this Act comes into force or at any other time upon the direction of the Lieutenant Governor in Council.

MR. FRAWLEY: There is not any evidence that the Board has not prepared such a scheme. Of course, the Board did not come.

MR. MAHAFFY: Do you say they have?

MR. FRAWLEY: Well, I had better not say anything about it, but there is no evidence about it, that

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is all.

THE CHAIRMAN: Well, we are alive to that.

MR. MAHAFFY: Surely my learned friend should admit a thing like that. We are not going to break up on a technical point of evidence.

MR. FRAWLEY: The Board, I am sure, and my friend does too, realizes my difficult position. I am not here for this Conservation Board.

THE CHAIRMAN: The position of the Board is that they are not just coming before this Commission. That is the position.

MR. MAHAFFY: Surely, Mr. Frawley, although Commission counsel is a member of the Attorney General's Department-----

THE CHAIRMAN: If that is the position of the Board not to appear here surely you would not ask anybody who is here for another purpose to make admissions for them?

MR. MAHAFFY: Surely, Mr. Frawley - they used to say"a man who hides behind a woman's skirts is a coward, nowadays he is a magicinn." But surely Mr. Frawley is not going to sit here when he knows that no scheme has been made and suggest to the Commission that, perhaps, a scheme has been made.

MR. FRAWLEY: What good would it do that I should say either one or the other. I am not playing ducks and drakes with the Commission at all. What I am trying to remember is what I am here for and who I am representing. I am representing this Commission.

MR. MAHAFFY: Well, perhaps-----

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THE CHAIRMAN: I think you will get no further than saying all legitimate inferences can be drawn because the Board has not appeared, if we think it proper to draw any. But I think that must be the basis of your argument. Not that Commission Counsel has got to represent the Board. On all of the occasions that the Board has appeared here or any member of the Board they have been represented by Mr. A. L. Smith and not by Mr. Frawley.

MR. MAHAFFY: That is right, Sir. I realize that. What I am saying is that after all Mr. Frawley is a representative of the Attorney General's Department and he knows or he can easily find out whether my statement is right or wrong that the Board has not in fact submitted to the Government this proposal. However, we will let it go at that.

MR. COMMISSIONER LIPSETT: I suppose you can quite clearly say that no knowledge of that has come to your client from the Board or any one connected with it?

MR. MAHAFFY: That is true, Sir.

(Page 16,298 follows.)

Now I wish to pass on from that point and simply say this that Gas and Oil Products, Limited, I think, as the evidence has indicated, not only the evidence which we adduced but also the evidence with respect to competition, has performed a useful public service as a competitor in this Alberta market. It cannot hope to continue in that role if its supply of natural gasoline is cut off, while at the same time its principal competitor retains access to this product.

Now I wish further to suggest that, at this time, I realize that the war is used as an excuse for a lot of things, but I suggest at this time, while the country is in a state of war, that it is very unwise to cut off and suspend this source of fuel because every possible drop of fuel will be needed for our ground and air machines in the next few months or in the next few years.

Now the evidence discloses that Gas and Oil Products, Limited, is making a very determined effort to contract gas from crude wells and already has made quite considerable progress in that direction. If the Board persists in the view and in the theory that the underground, I mean the theory of the underground field is correct, namely through the movement of the gas and oil, and that the gas should be produced through the crude wells rather than through oil wells, then it is submitted that we should be given a reasonable period of time in which to make a gradual switch in the processing of the gas-cap gas, to crude area gas. This will take quite

some time for various reasons due first, to the lower natural gasoline content of the crude gas especially in the early life of those wells; second, due to the fact that the recovery of natural gasoline from gas produced from the crude wells oftentimes does not justify the cost of installing the gathering system to pick up that gas, at least in the early stages of the life of the well and third, the unfortunate fact, as shown by the evidence, that a good many of the crude oil producers are not the least bit interested in having their gas processed (P.15,544-5), and fourth, in any event at the present time even if we could get a lot of this gas, there is not sufficient available at the present time to make up the requirements of our plant, but nevertheless that change over to crude oil is taking place, that change over to crude gas is taking place, and we have suggested to the Board, and we suggest to this Commission, that in the meantime the Board should not take any precipitate action as suggested in their circular, Exhibit "676", which will completely throw us out of business before we have any opportunity of completing that gradual switch-over process.

MR. FRAWLEY: Can you give the Commission any idea, approximate idea, of about how long that might take. You speak about the desirability of there being no precipitate action, you say on page 15, "This will take quite some time", and I wondered if your clients had any idea how long it would take.

MR. MAHAFFY: I think it was Mr. Hayland or Mr. Boyd, I am not sure which, said in the evidence that it is pretty difficult to say for the reasons I have just mentioned but the fact remains that they put in a new

gathering line system, I think at very considerable cost, this summer, through the crude oil area. They indicated that they had tied up six or seven wells having a total production of about 6 million cubic feet a day of gas and I do not think anyone can suggest that so far as this particular absorption plant is concerned, it is not out out and doing its best to contract our gas.

MR. FRAWLEY: You say on page 8, "The company is now making every effort to secure gas from crude oil wells and last summer laid a new gas line gathering system and has been able to contract several wells to a total of 6 million cubic feet of gas per day. The natural gasoline recovered from this gas plus the recovery from the 12 million cubic feet from the gas-cap", that you are now permitted to flow, under the provisions of the Oil and Gas Wells Act, that that will just about make up the amount of natural gasoline requirement which you say you should have.

MR. MAHAFFY: That is right.

MR. FRAWLEY: Well I do not know, it seems to me, it might be of some help if we had even an approximate idea. Does it mean a year?

MR. MAHAFFY: All I can say is that during the last twelve months we have contracted 6 million feet of gas.

MR. FRAWLEY: Yes.

MR. MAHAFFY: Now so much, Mr. Frawley, it is impossible for me to say. If we could go out tomorrow and were able to make a reasonable contract with the producer of 25 million cubic feet of gas per day, well that is

the answer to it, it would just take two weeks to do that, but if we have to gradually get it as these wells are willing to sell and as we are able to extend that gathering system, which can only be done if the volume of gas flowing into it justifies the extension, I cannot say how long that will take, nobody can say that.

MR. FRAWLEY: When the Royalite contracts a crude oil well, does it also contract the crude oil gas; are you also shut out from those wells?

MR. MAHAFFY: I cannot answer that, but I do not think they do.

MR. FRAWLEY: You think you could go to the same well that has contracted its crude to the Royalite and get your gas from such a well.

MR. MAHAFFY: I am sorry, I cannot answer that definitely, Mr. Frawley, I do not know whether the Royalite are taking double contracts now or not.

MAJOR LIPSETT: Mr. Mahaffy, as I recollect the evidence, 6 million cubic feet of this crude oil area gas is not the equivalent at all of 6 million cubic feet of the gas-cap gas.

MR. MAHAFFY: That is right, sir. It only has about half the value. That 6 million cubic feet from the crude oil area will take the place of about 3 million cubic feet in rough figures.

MAJOR LIPSETT: Yes.

MR. FRAWLEY: That is, you want 25 million cubic feet from the crude area.

MR. MAHAFFY: Well we say that our require-

ments are 15 million cubic feet a day from the gas-cap area or 30 or 31 million from the crude oil area.

MR. FRAWLEY: Yes.

MR. MAHAFFY: Now one further point in connection with the Conservation Act itself. Mr. Cottle, back in September, filed with the Commission a memorandum setting forth the scheme of conservation, Exhibit "591". May I ask sir, on page 16, the third line, I didn't have that Exhibit number when the argument was handed to you, the third line on page 16, that is Exhibit "591".

Now I submit that from a perusal of that Exhibit "591" it is clear that the whole plan of conservation is one which pro-rates production to available markets.

MAJOR LIPSETT: Mr. Mahaffy, I am very sorry for interrupting you again. As to what I asked you before, that 15 million cubic feet from the gas-cap area or 31 million cubic feet from the other area, if you had the 31 million cubic feet from the crude oil area, would there be any difference in the cost of processing by reason of having to utilize the double quantity.

MR. MAHAFFY: It would make practically no difference, sir.

THE CHAIRMAN: Any more cost of buying it or getting it.

MR. MAHAFFY: Heretofore there has not been but it may be ----

THE CHAIRMAN: To get the double quantity of the one to compensate for the other.

MR. HARVIE: It is largely I think a matter

of pressure, the pressure that it is delivered at at the crude well.

MR. MAHAFFY: The extra cost really, sir, comes in in the additional expense we are put at in putting down the gathering system.

MAJOR LIPSETT: That would mean then some increase.

MR. MAHAFFY: Yes, it is more expensive for us to gather the gas.

MAJOR LIPSETT: To take care of that capital expenditure.

MR. MAHAFFY: That is right.

MAJOR LIPSETT: I am sorry for interrupting you.

MR. MAHAFFY: That is quite all right, sir, I am glad you did. However, we are making no point, I may say, of the additional cost that we would be put to in that respect.

What I started to say was that Exhibit "595", Mr. Cottle's statement of the conservation scheme, I submit makes it clear that the whole plan is one which pro-rates production to available markets.

In view of the terms of the agreements made between the Dominion of Canada and the Province of Alberta, and incidentally, sir, these are found as schedules to certain Statutes of the Province of Alberta and in case members of the Commission might wish to refer to those,-I doubt if you will,-I have had clipped together in this pamphlet form the Alberta Natural Re-

sources Act, Chapter 21 of 1930 and the Agreement, the Natural Resources Agreement as it is called, which is a schedule to that Act. Then there is also the amending Agreement which is a schedule to Chapter 14 of the Statute of 1938 and also the old Gas and Conservation Act which was Chapter 15 of the Statutes of 1938, the first session. Now in case the members of the Commission might wish to have these particular documents in handy form I have made up a couple of copies.

THE CHAIRMAN: We will be glad to have them.

MR. MAHAFFY: And I will leave them with Mr. Cutler for you, but these agreements between the Dominion and the Province by which the Natural Resources within the boundaries of Alberta were transferred to the Province lay down certain restrictive features with respect to the operation and administration of oil and gas properties, and our view of the terms of those Agreements, which has been contended in the past in arguments which we have had in the Courts in respect of this matter, on behalf of Gas and Oil Products, Limited, and associated companies, it has been contended I say by them that the Board has no power to pro-rate production to market requirements. There is nothing in the agreement which would give the Provincial Government the power to do that.

The first Conservation Act of 1938 specifically provided for pro-ration to markets and on this ground, as I say, we attacked the Act in the Courts, consequently in November 1938 at the special session of which we have been speaking, this Statute was repealed and a new

Statute was passed. It contains no reference whatever to pro-ration to markets, none at all. In fact the Act does not say anything except what it says in Section 16. The Commission can read the Act through from beginning to end and the only section which has much meat in it is Section 16 and that shuts out the conservation scheme and all it says is this:

"In order to effect the intent, purpose and object "of this Act, the Board is hereby authorized and "empowered with the approval of the Lieutenant-in-"Council to control and regulate the production of "petroleum either by restriction or prohibition or "both, or to repressure any oil field, gas field "or oil-gas field and, incidentally thereto, to pro-"vide for the compulsory purchase of any well or "wells, and for such purposesto make such orders "and regulations as the Board deems requisite.
"(2) the Lieutenant-Governor-in-Council may re-"voke any order or regulation made pursuant to this "section."

Now those are all the instructions which the Legislature gave to the Board in this Act and incidentally just in passing that does not seem to conform with Dr. Frey's ideas, that certain general principles should be laid down for the Board to follow, but after the passage of the second Act, which as I say, made no mention of proration to markets, the Board nevertheless persisted in its original view and it continues to prorate production to market requirements.

Now I realize that this

[illegible]

[illegible]

[illegible] and that [illegible] the [illegible] [illegible] [illegible]

Commission is not going to decide on the legality or otherwise of this Statute but it is here that I originally intended to make mention of Section 44 which obstructs, in fact, closes out entirely the right to get into the Court in respect of any of these problems and our suggestion,-and I would like this to be a definite suggestion if I may put it that way, is that this Commission should recommend to the Government that this Section 44 should be amended or eliminated. I would say that it should be amended to comply with the perfectly reasonable attitude which Dr. Frey has said is followed in most of the Legislatures in the United States.

Now so much for that. It should be pointed out too that if the order of the Board as suggested in Exhibit "676" were put into effect every operator on the gas-cap in Turner Valley, operators of wells, operators of absorption plants, except the Royalite Oil Company, Limited, would be crippled in their operations and it only so happens that the Royalite would not be seriously hurt, if hurt at all, because they happen to have a contract, an exclusive contract, for the sale of gas to the Calgary Gas Company and the Board has considered that that justifies the Royalite in producing that gas and in extracting the natural gasoline from it before it goes into the Gas Company's mains.

Now just in conclusion, and I will not be much longer-----

MAJOR LIPSETT: Perhaps you do not know, Mr. Mahaffy, does the Royalite get any other gas, other than

that which is needed for the City of Calgary.

MR. MAHAFFY: You mean, sir, do they process any gas.

MAJOR LIPSETT: Other than what is required for the City of Calgary.

MR. MAHAFFY: Oh yes, they do sir. The Royalite have two plants, Royalite No. 1 plant in the North end of the field, just near the little town of Turner Valley and Royalite No. 2 plant which is just a stone's throw from the Gas and Oil Products plant in the South end of the Turner Valley. Now the No. 2 plant which is processing natural gasoline is not connected in any way with the Gas Company's distributing system.

MAJOR LIPSETT: And that is curtailed in the same way as everyone else.

MR. MAHAFFY: Just the same way. The three plants in the South end of the Valley are just in the same boat.

MAJOR LIPSETT: Would Royalite not be affected as regards that plant.

MR. MAHAFFY: It would be as regards that plant but insofar as its No. 1 plant,-I am glad you mentioned that, that is a more correct way of putting it than I did, insofar as the No. 1 plant is concerned they would not be affected but, as you point out, they would be affected in the No. 2 plant in the South end.

MAJOR LIPSETTT: You mean they would not be so seriously affected.

MR. MAHAFFY: I say here, and it is re-

duced to writing on page 17, that every operator on the gas-cap would be curtailed as a result of such an order going into effect except the Royalite Oil Company.

Now we say, and the evidence shows, that the Board has already, during the past two years, made most substantial reduction in the amount of gas produced from the gas-cap. We have not objected during the past nine months to the reduction of our operations from the 31 million cubic feet a day basis to the 12 million cubic feet a day basis, It has meant a sacrifice obviously to the company which I represent but as I said this morning, conservation is something which is essential and everybody must be prepared to make some sacrifice but we do submit that the Board has now reached a point of compromise in this affair, which is reasonably fair to all parties concerned, having in mind the equities of those parties and the practical considerations which are involved.

Should the Board give effect to its tentative proposal contained in Exhibit "676", it may be achieving a more nearly perfect theoretical scheme although that is doubtful, but it will be doing so only by completely sacrificing the equities and the practical considerations which are so important and on which Dr. Frey laid much stress.

So we say "Leave things pretty much as they are." We have had to suffer a considerable sacrifice in what has already happened but the Board, we say, has now reached a reasonable compromise ground and they

should not push this thing to the theoretical limits.

Now just to briefly summarize what we respectfully suggest that this Commission should do, we suggest that recommendations should be made to the Government as listed on pages 17 and 18 of my brief and the first one is, that Section 44 of the Act should be amended to permit of appeals to the Court by persons who consider themselves aggrieved in respect of all matters except appeals from the decisions of the Board on technical problems; in other words, that the Section be amended so as to comply with Dr. Frey's opinions on this point; (b) That the compensation section of the Act be amended so as to provide an effective measure of compensation to all persons who suffer loss as a result of conservation orders, including a company such as Gas and Oil Products, Limited, and that a scheme be brought forward in which provision for the same is made; and (c) that the Conservation Board be advised or instructed that in the opinion of theGovernment and in view of the equities and practical considerations involved, that no further change should be made, for the present, in the allowable production of wells located on the gas-cap of the Turner Valley field.

Those are our submissions, Mr. Chairman and Mr. Commissioner, and I am sorry that I have taken so long to submit them. I had no idea I would be this long.

MAJOR LIPSETT: Mr. Mahaffy, does your recommendation or your submission at the end, does that in-

volve a loss of gas that would not take place under this new order if it were made.

MR. MAHAFFY: You mean the production of gas, sir.

MAJOR LIPSETT: No, a certain amount of gas must be wasted under your suggestion under present conditions as against the conditions which would exist if the new order were made.

MR. MAHAFFY: Well "waste", waste, is a matter of opinion, sir, and of comparison.

MAJOR LIPSETT: Is there any, assuming that there is theoretical waste or whatever you like to call it, is there any way in which that could be taken care of in the opinion of your engineers or anything that could be done to lessen that waste.

MR. MAHAFFY: Well no, I do not think there is, sir. As I say, whether or not it is waste, that is a matter of comparison. Now the Board takes the view that it is quite all right to allow gas to be produced in the crude flank area so long as it has brought the oil up to the surface. Now in our case in the gas-cap we say that we get the absorption gasoline out of it, which is a very valuable product and then after that we use it to run our machinery and we say that the gas has not been wasted, that it has been put to a very valuable, worth-while use, but the Board says that because that gas is then burned that that is a waste and they also say that that gas in the gas-cap should not be produced but should be allowed to be produced by some crude well owner to lift his crude.

THE CHAIRMAN: And then again it is wasted.

MR. MAHAFFY: Yes, after it has done that it is burned.

MR. HARVIE: A two-fold waste.

MR. MAHAFFY: There is no absorption recovered from a lot of it and then the gas is burned.

MR. FRAWLEY: You will be compensated for that from the crude oil people.

MR. MAHAFFY: Well that is something I would like to hear from you. I do not know. There is no compensation scheme in effect yet.

MR. FRAWLEY: I know but who has been hurt, who has been hurt by the order of the Conservation Board?

MR. MAHAFFY: We have.

MR. FRAWLEY: No, that is the Oil and Gas Wells Act and we have threshed all that out.

MR. MAHAFFY: And I will put it this way, all right, there again we get from one department to another. We know very well, at least I do, that the Conservation Board had the provisions of the Oil and Gas Wells Act changed from 40% to 25%; also going on from there,-and my learned friend says "Who is going to be hurt", or "who has been hurt". I say "We have been hurt". But supposing I am wrong about that and the Conservation Board puts in this suggestion contained in Exhibit "676" then I am certainly going to be hurt and that is what I am endeavoring to anticipate.

THE CHAIRMAN: You say that it is a present harm to you to be kept on tenterhooks in this way, this continual threat over your head.

MR. MAHAFFY: Well it is, sir, it is not fair to a business. Business cannot just operate day by day. Surely a man should have some security of tenure in his plans and what he proposes and hopes to do.

THE CHAIRMAN: Well who is next.

MR. FRAWLEY: Mr. Harvie.

MAJOR LIPSETT: Mr. Mahaffy, I am sorry, Mr. Harvie.

MR. HARVIE: Certainly.

MAJOR LIPSETT: I had a note, Mr. Mahaffy when you were starting your argument, to ask you a question about something which you had just indicated you were not going to possibly deal with and that is this question of the increased price of crude. You heard, I suppose, Mr. LeSueur's evidence that an increase in the price of crude might be fairly put in force having regard to the reduction of 8 cents in the pipeline rate and Mr. Mayland on the other hand when he was giving his evidence, suggested a price of around $1.00, have you anything to say about that, having regard to Mr. LeSueur's subsequent evidence.

MR. MAHAFFY: No, I have not sir. I have no instructions on that point. Mr. Mayland I know did give some evidence at that time but apparently it was thought that, I hope not incorrectly, that probably nothing turned on that and I was not instructed to say anything about it.

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MR. MAHAFFY: Also, Sir, perhaps I should say that Gas and Oil Products Limited is conducting a refining operation. Gas and Oil Products as such is not a producer of crude oil. It buys all its crude oil.

MR. COMMISSIONER LIPSETT: And that is why I thought you might be interested in saying something about the suggestion from Mr. LeSueur that the posted field price should be increased 8 cents or by Dr. Brown that it might be increased 10 cents, because as a purchaser of that crude I thought perhaps your Company might be interested or might have some views.

MR. MAHAFFY: No, we are quite content to operate on the basis of the field price.

MR. COMMISSIONER LIPSETT: Whatever it is?

MR. MAHAFFY: Yes sir.

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MR. CHAIRMAN: I regret that I have not extra copies of my brief, other than the one by way of notes that the Court Stenographer has, and if it is agreeable I will adopt the same procedure as the other Counsel have, by not referring to the page and number of the volume. I have set out all that information and given it to the Court stenographer, and it will be incorporated in the transcript. Any particular reference that is at any time wanted I can give it to you as we go along.

THE CHAIRMAN: That which the Court Reporter has is an exact copy of what you are reading

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from?

MR. HARVIE: It is an exact copy of what I am reading from but I do not exactly stay word for word with this.

THE CHAIRMAN: Oh quite.

MR.HARVIE: Mr. Chairman, Mr. Nolan in his presentation has given you a very thorough analysis of the evidence that has been submitted by the various witnesses on the numerous subjects under consideration, and in his summary has given you the views of his clients on these matters. And as Mr. Ray and Mr. Mahaffy have done likewise in respect to their views and ideas on the points that were dealt with by them - Mr. Mahaffy did restrict his really to one point - but in view of the thoroughness with which the evidence has been summarized I feel that there is no good purpose to be served in again completely analyzing the evidence, with the result that I have, since hearing these presentations, taken it upon myself to revise my brief, with a view to curtailing my summary of the evidence and eliminating repetition, except in such cases where I think the evidence is of such importance that it should be repeated and thus emphasized. This revision, as you realize, had to be done very hurriedly with the result that I am afraid my summary does not now deal with matters in such logical sequence as I would like it to, but I feel that the presentation in the revised form would be preferable than too much repetition.

There will be some points on which I have touched lightly, if at all, but I take it I will nevertheless be free to base any

arguments or summaries on the evidence as summarized by those preceding me, or as appears in the transcript, even if not specifically referred to in my brief.

While I have only commendation for the excellent presentations of those preceding me, it must be remembered that both the Imperial Oil and the Texas Company are competitors of ours, and, as I think the evidence well establishes, I might say they are keen competitors, and, therefore, do not necessarily look upon all matters in the same light as we do. I therefore propose, at least to some extent, to emphasize such evidence as I think will best present the views of my client to your Commission.

I have, like those preceding me, divided the subject into and will deal with it under the following twelve heads:-

1. Crude Contracts.
2. Conservation, Absorption Plant and Natural Gasoline.
3. Field Price.
4. Pipe Line.
5. Refining.
6. Marketing.
7. Competition.
8. Taxation.
9. Capital Employed.
10. Rate of Return.
11. Regulations.
12. Remarks and Recommendations.

First, Crude Contracts.

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The subject of the advantages and disadvantages of Crude Contracts has been dealt with by Mr. Gaby, Mr. LeSueur and Dr. Frey.

Mr. LeSueur in Volume 128, Page 14,268, states:

"Now we have purchase-contracts with a large "number of consumers for the purchase of their "oil but the price, the purchase price stipulated "in those contracts is in all cases the posted "price and it is the same price as Royalite itself "received. The real value in those contracts "is simply an assurance of supply for the refineries. "There is no profit in the contracts because every- "thing, the full posted price, is paid to the "producers."

This same remark applies to our company.

He further deals with the subject in reply to a question from Mr.Frawley, in Volume 135, Page 15,058.

"MR. FRAWLEY: Q. Do you regard the situation as such, from your refinery requirements, do you regard it as such that you need to have the production tied up for the whole life of the field?

A. Well a contract to my mind is a safeguard in the event of a scarcity of production. "

Mr. Gaby deals with the subject as to the number and nature of the British American

contracts for crude in the Turner Valley field, as follows:- (Volume 136, Page 15,266).

"I believe the question was that we should
"give all the information as to the contracts,
"the crude contracts we have in Turner Valley.
"At the present time we have 32 crude contracts;
"of which 14 are for the life of the well, with
"financial interest; 6 no financial interest;
"2 are five year contracts; 5 are thirty days
"notice and 5 of them are verbal contracts.
"Seven to eight of these contracts are for gas
"wells serving our absorption plant."

Those would be gas-cap wells.

Dr. Frey, in dealing with the subject in Volume 131, Page 14,613 through to page 16,267, states, on being questioned by the Chairman,

"Chairman: We have had evidence pointing to alleged evils in connection with anyone being able to contract all the wells in the field or most of them. Do you think there is anything in the suggestion?

"Dr. Frey: Now first, concerning the producer, I cannot see where the producer is receiving an injustice by reason of his arrangement on the long time basis if he is being paid on the posted price, which we will assume is determined by competition, and is consequently the best price that the crude will bring in the market."

And later he continues: (Volume 131, Page 14,622):

"Dr. Frey: Now it seems to me that as far as the producer is concerned he is in a position where the life of his well is protected so far as producing is concerned and likewise the buyer who is, let us say, the refiner or whatever kind of buyer he is, is protected in getting and having a definite source of supply. Who are the parties hurt? It seems to me that the parties hurt or who had a complaint against this type of system are two:-

(1) the producer who wants to produce more than the allowable of the well, which he may sell at less than the posted price; that would be destructive of the posted price; the other is the buyer who wants to buy at less than the posted price and who is just on the opposite side of the equation; those are the two people who would principally be concerned in complaining against purchasing of the type that exists in Turner Valley."

And he was questioned by the Chairman. (Page 14,625).

"The Chairman: The thing is, is it right that one company or three companies can tie up a whole field so that no other refiner can get oil and so that the producers cannot treat with other refiners?

"Dr. Frey: Well if they did not, supposing they did not tie it up, then what would be

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the consequence; the producer would have no assured outlets.

"The Chairman: That every refinery should be allowed to contract in order that it may have a back-log of supply?"

to which Dr. Frey agreed by saying "Yes".

Several days later Dr. Frey returned to the subjeft and states: (Volume 137, Pages 15,342 and 15,343).

"You asked me a question concerning the policy "of oil companies in the matter of contracts with "wells, leases and so on. And while I do not "think there is any absolute right or wrong about "the matter, I think it is generally a good principle "that except where the crude purchasing company has "financial interest in the producing company, either "by affiliations or marketing extensions, that it "should contract for connections and purchases only "on a well to well basis and not on a basis covering "a large amount of acreage, except in special circum-"stances, and I think that those exceptional circum-"stances should be recognized. I think of a situation "like this, where the construction of a pipe line "requires a considerable supply of crude and where "the producing companies, either as an individual "company or as an association of producers, might "approach someone for a pipe line, Under such a "situation it seems to me that there would be an "exception in which the pipe line company might "very well consider that blocking out a very con-"siderable volume would be necessary for the financial

"justification of construction. But in an established "field it seems to me that it is a perfectly good "principle and it is more or less followed, almost "universally in the United States, that the purchases "are made on a well to well or at least lease to lease "arrangement."

Then Mr. Frawley questions him on it.

"Mr.Frawley: Q. You did not say anything about the term of the contract you spoke about?

"Dr. Frey: A. The term of the contract, I think that is more important to the industry and to the producers than it is to the State, and I can see a situation under which a lifetime contract would be highly desirable. I can also see situations under which it might be convenient."

THE CHAIRMAN: Well you have finished with that phase of the matter. Your next subject is Conservation, is it?

MR.HARVIE: Yes, Mr. Chairman.

THE CHAIRMAN: I do not think at this hour we will embark upon that very important matter, particularly as I want to get away a little earlier tonight, if it suits your convenience?

MR.HARVIE: That will be very satisfactory.

MR. COMMISSIONER LIPSETT: Mr. Harvie, in the morning before you pass from that I would like to have some expression of your company's views on this question

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in reference to crude. I see, first of all, contracts being necessary and desirable for the purpose of providing for all your requirements.

MR.HARVIE: Yes.

MR. COMMISSIONER LIPSETT: Then under a scheme of conservation and so forth, once you get your own requirements provided for, should other refiners regardless of contracts, be entitled to get the surplus crude necessary for their requirements without any loading charge or other buying charge or broker's charge, at the posted field price?

MR. HARVIE: I would be very glad to give you something on that.

MR. COMMISSIONER LIPSETT: Very well, in the morning?

THE CHAIRMAN: We are talking about tomorrow morning. That is Saturday. I think we will sit on Monday at half past ten.

(At this stage the Hearing was adjourned until 10.30 A.M. 11th December, 1939).

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The Province of Alberta

IN THE MATTER OF THE PUBLIC INQUIRIES ACT

—and—

IN THE MATTER OF a Commission, dated the 12th day of October, A.D. 1938, to inquire into matters connected with Petroleum and Petroleum Products

Commissioners:

The Honourable MR. JUSTICE McGILLIVRAY
(*Chairman*)

—and—

L. R. LIPSETT, ESQ.

Session:

CALGARY, Alberta DECEMBER 11th, 1939

VOLUME 147

FINAL ARGUMENT

THE CHAIRMAN: All right, Mr. Harvie.

CRUDE CONTRACTS.

MR. HARVIE: Mr. Chairman, at the conclusion of the sittings on Friday Mr. Commissioner Lipsett asked for a statement as to our Company's views as to whether other refiners, regardless of our contracts, should be entitled to get the surplus crude necessary for their requirements without any loading charge, buying charge or broker's charge, at the posted field price.

STATEMENT BY MR. HARVIE.

I think our Company has made it clear in its evidence that it is prepared at any time to sell its surplus crude at field price plus transportation plus a handling charge, and, as I understand the Commissioner's question, he now wishes to have further information in regard to this handling charge.

In Volume 137, pages 15,350-51-52, the subject is dealt with by Dr. Frey and he has referred to this charge as a brokerage and intimated that he thought some charge for this service was justified and that it was a general practice in his country. We agree with Dr. Frey in this view.

As to the amount of such charge, it is impossible to state what would be a reasonable one without considering the facts in the particular case, but generally speaking, it should recompense the selling company for its actual expenses incurred in granting such service and be sufficient to include a fair profit for such service.

However, I propose to deal with the matter further in my remarks and recommendations at the conclusion of my presentation.

I already had some remarks included on that.

Now we come to the subject of conservation----

MR. FRAWLEY: I was just asking Mr. Nolan something on that point, Mr. Chairman, that is as to the policy of the companies with respect to the supplying of crude and making crude available at the Turner Valley end of the pipeline. That is an important matter and Mr. Nolan is just going to give me a reference as to his company's statement as to that and I wondered before Mr. Harvie left this if he had a reference to something in the evidence, if there was any, as to what his company is prepared to do at the other end.

MAJOR LIPSETT: What was your page, Mr. Harvie?

MR. HARVIE: 15,350-51-52.

THE CHAIRMAN: Well Mr. Nolan is checking on that.

MR. FRAWLEY: Oh I am sorry. It was not to be done just at the moment, it was for my information. I intend to say something about it and I wanted the reference and that is all.

THE CHAIRMAN: Mr. Mahaffy, excuse me, Mr. Harvie please for a moment.

MR. HARVIE: Yes.

THE CHAIRMAN: As you are only here intermittently, Mr. Mahaffy, may I ask, speaking for your company are you going to have anything to say at any time upon the effect that the 8¢ being passed on to the producers has suggested by Mr. LeSueur.

MR. MAHAFFY: My Lord, you mentioned that on Friday and I have no instructions to deal with that point, sir, and unfortunately Mr. Mayland is away. He may be back before the Commission rises or I may be able to get in touch with him but as presently instructed I have no suggestions.

THE CHAIRMAN: That is what I understood was your position but I wanted to be very clear that we put it to you. All right, thank you, I am sorry Mr. Harvie.

MR. HARVIE: Quite all right, sir.

MR. FRAWLEY: Perhaps more or less to complete this, you covered this in your submission.

MR. NOLAN: Yes I did.

MR. FRAWLEY: Then I do not want to interrupt Mr. Harvie at all. It was just for my own information more than anything else. Mr. Nolan calls my attention to page 33 of his brief under the heading "Field Contract", quoting from Mr. LeSueur, Volume 135, page 15,057, in which place Mr. LeSueur explains, this being Mr. Nolan's own words:

> "We have evolved no definite policy in the case
> "of a refinery or other responsible persons de-
> "siring delivery in Turner Valley."

That is precisely what I wanted. Thank you.

THE CHAIRMAN: I wonder, Mr. Nolan, and the same applies to Mr. Harvie also, whether or not either of you think you can be of more help than that. Supposing we thought it important to evolve something definite we would like to feel that we could have the benefit of your views more concretely than that.

MR. NOLAN: Yes. It is not easy to lay it down----

THE CHAIRMAN: We do not like to do something without someone who might be hurt or helped as the case might be having something to say about it, rather than just that there should be a handling charge. That handling charge could easily become prohibitive; equally we might do something which was unfair to you and I would not want that without having heard from you as to it.

MR. NOLAN: One of the difficulties of making a statement of policy which covers it, is that it occurs to me, the difficulty in knowing just what the peculiar circumstances are, how much oil this particular Turner Valley person would want, how many days in the year he would want it and what quantity would he require to be supplied. All these things might enter into it.

THE CHAIRMAN: Yes.

MR. NOLAN: I can say no more.

THE CHAIRMAN: You see if we adopt Mr. LeSueur's view of passing on the pipeline, it might have

quite an important effect upon refiners in Turner Valley, adverse to them of course and that is no reason perhaps for not doing it, if that is the right thing to do but equally though while they might have to suffer that, one thing which has been bothering us is, should we leave in the air what the brokerage charge or handling charge would be, call it what you like, since we are trying to deal with everything.

MR. NOLAN: I am wondering if that does not come under the Public Utilities Act.

MR. HARVIE: In our case I think that would be the answer.

THE CHAIRMAN: Perhaps it does and that may be the answer.

MR. HARVIE: I think that has been suggested in the evidence as I remember it, during conversations with some persons.

THE CHAIRMAN: I do not remember that now.

MR. NOLAN: May I say this to you, it is not on the record but as a matter of fact the Gas and Oil Products launched an application before the Utilities Board for the purpose of splitting the pipeline charge; their point at that time being that they were doing their own gathering or would be in a position to do their own gathering, in which event it was thought, they thought it not fair that they should them be asked to pay the gathering, and the transportation charge when the only user they were making of the line was the main trunk transportation system. That was their point and that did come before the

Board and it was adjourned at the time and will come back before the Board and perhaps that is the answer.

THE CHAIRMAN: That may be. If Counsel will look into it and satisfy us that that is the answer, we need not bother any more about it.

MR. FRAWLEY: Of course if I may say, Mr. Chairman, I think perhaps not enough importance has been attached to the effect of Mr. LeSueur's statement.

THE CHAIRMAN; We are sorry to interrupt you, Mr. Harvie, but I just wanted to bring this out.

MR. FRAWLEY: In the telegram of March 27th, 1939, Exhibit "669", and the covering letter Exhibit "670", now frankly, I think there is a great deal in that because there Mr. LeSueur has something quite different, admittedly so, to what Mr. Nolan's statement has always been and as to what his statement now is, because Mr. LeSueur then says, dealing generally with the question of supplying crude to other people:

> "Our policy is and will be to sell to any bona "fide purchaser such surplus crude as we may not "need for our own requirements at posted field "price plus pipeline buying and handling charges, "provided such purchaser supplies suitable facil- "ities for accepting delivery and make satisfactory "financial arrangements for payment."

And you see that might be said to apply and to over-ride the undertaking which Mr. Nolan gave. This says "to any bona fide purchaser", which might be the English interests or anybody.

MR. NOLAN: That is not the point which the Chairman is making. The Chairman says, what happens to a man who lives in Turner Valley and wants his delivery there. Mr. Tanner was seeking information for an entirely different purpose, to take that information away with him and that is why he got that statement. That had to do with the larger pipeline.

MR. FRAWLEY: Quite, and I only wanted to know, if this is the last word on the subject, perhaps this is what will apply and that there should be a buying charge.

THE CHAIRMAN: No. At any rate, Mr. Frawley, I would be inclined to think, and would you not, that what Mr. Nolan suggests is right, that they contemplated whether this company that is sending that wire to Mr. LeSueur would be doing the buying for someone else. What I got from that was that in the event of a pipeline going through to the Great Lakes the people who had put money in it might be concerned with having his company buy as well as handle, as buying agents, and if so they would have to be paid.

MR. FRAWLEY: Yes, well, all right. I agree that these telegrams were sent on the eve of Mr. Tanner's departure to England.

THE CHAIRMAN: The others would certainly be doing their own buying. At any rate all I would like to know at present, just for the sake of clarity and in order that no injustice might be done to any one, this Commission is no more concerned with Gas and Oil Products than it is with any other company but I was suggesting that if we adopted Mr. LeSueur's view, it would effect the price

that Gas and Oil Products would have to pay.

MR. FRAWLEY: You mean that 8¢?

THE CHAIRMAN: Yes. Now if we are going to do that should we not be concerned with further payments that they are going to have to make, should we ever adopt Mr. LeSueur's view.

MR. FRAWLEY: Yes, surely.

THE CHAIRMAN: And should there be anything more concrete than that that they would have to pay a handling charge. Now if there was somebody to determine what that handling charge should be, other than this one, why should we concern ourselves with it. It is suggested by Mr. Nolan that probably the Utilities Board is the one and perhaps it is. I just indicated to Counsel we would like them to give us the benefit of their views about that after they have looked into it.

MR. FRAWLEY: Yes, and I would think for all transactions which began and ended within the Province the Utilities Board would have a right to fix any handling charge. Mr. Mahaffy's plant buys crude to supply Saskatchewan refiners, where they simply act as buyers of oil, and there is a question there.

MAJOR LIPSETT: Does the Utilities Act enable the Board to fix the handling charge to somebody who is not a Public Utility.

MR. FRAWLEY: No, all the Public Utility Boards can do would be to say what its Utility should charge and that is all.

MAJOR LIPSETT: Yes, but is the Royalite Oil

Company a Public Utility so far as buying crude is concerned?

MR. FRAWLEY: That is a very wide act and if it is not now, it should be made so, because as I recall there were extra sections put in there which would make it a public utility, so far as the storing of oil is concerned for instance, I think the pipeline is a public utility now with respect to all that.

MAJOR LIPSETT: Is that storing oil or handling oil for deliveries, would it be as wide as that?

MR. FRAWLEY: Of course I do not know. I have not looked into that.

THE CHAIRMAN: It is something that perhaps Counsel will help us by looking into it.

MR. FRAWLEY: Yes.

THE CHAIRMAN: All right, Mr. Harvie.

CONSERVATION

AND ITS EFFECT ON ABSORPTION PLANTS AND NATURAL GASOLINE

MR. HARVIE: On conservation, and I am dealing with this as applied to the Turner Valley, it is a very large subject and has been dealt with by many witnesses from numerous viewpoints.

Mr. Mahaffy has effectively dealt with the position of owners of gas wells in the gas cap and the operators of absorption plants. He has also dealt thoroughly with the conservation legislation now on our statute books, so I propose to restrict my remarks to the general principles that should be given consideration

to in any conservation scheme, and to the possible effects such a scheme may have on -

Firstly: The existing investments in absorption plants, gas gathering lines, etc., now established in the field, and

Secondly: The effect of curtailing the supply of natural gasoline.

THE CHAIRMAN: Now Mr. Harvie, you say Mr. Mahaffy has dealt with that and you are going on for that reason, you are going to other considerations.

MR. HARVIE: I am dealing with this in part but restricting my remarks chiefly to these two phases.

THE CHAIRMAN: All I wanted to know is as to the extent that you do not deal with it yourself, are you adopting what Mr. Mahaffy said, are you in accord with him.

MR. HARVIE: I am I think.

THE CHAIRMAN: All right.

The evidence of Dr. Frey is, I think, most helpful and illuminating.

He says, and I refer to the following extracts from his evidence: (Vol. 135, page 15,007).

A. "Yes I do believe that it is not possible to work out a conservation scheme purely on a formula".

THE CHAIRMAN: Again interrupting you and I will try not to make my interruptions more often than I possibly can.

MR. HARVIE: Quite all right, sir.

THE CHAIRMAN: Have you the volume and page.

MR. HARVIE: Yes, in every case.

THE CHAIRMAN: And we are going to get that.

MR. HARVIE: Yes.

MR. FRAWLEY: I was just speaking to Mr. Taylor, I think it would be very helpful, I do not know to what extent Mr. Harvie has handed the reporters anything but to read a transcript of argument without a goodly, liberal number of headings and sub-headings and indications of paragraphs is very difficult, whereas if the reporters, Mr. Harvie, can get from you some guide so that they would use your subheads and your paragraphings and your general outline as to your submission, it would be very helpful.

MR. HARVIE: They have a copy of what I am reading from.

MR. FRAWLEY: In addition to what you are reading.

MR. HARVIE: Yes.

MR. FRAWLEY: These things such as the page in this case of the evidence of Dr. Frey is I think most helpful.

MR. HARVIE: I refer to the volume, the following extract from the evidence, Volume 135 and page 15,007.

THE CHAIRMAN: And that is in the copy.

MR. HARVIE: Yes.

MR. FRAWLEY: Apparently the reporter is going to give the Court the benefit of what Mr. Harvie is reading and that is very fine.

THE CHAIRMAN: Yes, it is so much easier.

MR. FRAWLEY: Subheads and all.

MR. HARVIE: Yes.

MR. FRAWLEY: For some reason Mr. Ray's brief was not taken down that way, on his own express instructions.

THE CHAIRMAN: That will be very satisfactory then.

MR. HARVIE: Dr. Frey says; and I will repeat what I read:

A. "Yes I do believe that it is not possible to work out a conservation scheme purely on a formula; that is that any scheme has to be tinctured with the practical consideration that results from divided ownership." And again

Vol. 135, Page 15008.

A. "I think the problem of equity is always present in the event that you have divided ownership and a difference in the period in which various parts of the field have been developed". And Again

Vol. 135, Page 15009.

A. "We think that one must assess the damanges that are likely to be done as well as the benefits to be derived and the scheme should be a balanced plan in which there is a reasonable re-

"lationship between the benefits accruing from the plan and the damages consequent." And again

Vol. 135, Page 15010.

A. "I think that in developing a plan we would have to consider the engineering as well as the equities, the equities as well as those of engineering." And again

Then Dr. Shaw gives it as his opinion, (Vol.11, P.1063), (also quoted Vol. 135.P.15021), that generally speaking the closing in of the gas cap will have little material effect in increasing ultimate recovery of oil.

DR. GILL states, (Vol. 11, P.1096), (also Vol. 135, P.15022);

"I do not think that pressure maintenance or pressure restoration in the gas cap will have any measurable effect one way or the other on total recovery of oil".

And DR.FREY continues (Vol. 137, P. 15336):

"conservation agency should be given broad powers but it should also be furnished with a number of important directions:

First: A clear cut declaration of policy.

Second: Definition as to what constitutes waste."

And just on that item, the remarks of Mr. Mahaffy as to that comment of Dr. Frey's pronouncement, is very pertinent, and it is apparent from Mr. Mahaffy's remarks that there may be a difference of

opinion as to what is "waste"; that gas, which is used to raise oil from the crude well can be burned and apparently the Conservation Board says that is not waste while gas that is used through his absorption plant for other purposes, possibly giving as great service, they say that is waste.

I will repeat what Dr. Frey states that one of the important directions should be:

(2) A definition as to what constitutes waste, and

(3) Directions as to "what to look for", and "what to act on", that is ,things it must do in order to be sure that everyone who has an interest has an opportunity at equitable adjustments;

(4) There must be provision for taking of evidence on which there should be findings and on the findings there should be rulings, and

(5) There should be recourse to the courts and a clear cut procedure as to the circumstances and how the injured party may go into court.

He refers to the Arkansas Conservation Act (Vol. 137. P.15338) and cites from the Act its purposes, from which I will only quote one item, namely:

> "An act to prevent waste.....and protect the vested, co-equal or correlative rights of owners of crude oil or natural gas".

Mr. LeSueur deals with the matter and I will make the following references to his evidence.

In answer to the Chairman he states (Vol. 136, P.15165).

"You have two schools of thought, or two fundamental principles working in conservation. One a strictly scientific one of absolutely efficient production and the other the principle of maintaining the equilibrium between supply and demand. Our viewpoint is that the ultimate objective of either principle is economic and that involves that the situations as they arise must take into account the equities and the economics of the situation".

He further states (Vol.136, P.15167):

"We have no wish to impose hardships on anybody. And, therefore, if the matter comes up there are certain equities there which I think should be considered".

Then in answer to a question from Mr. Frawley he states, (Vol.136, P.15168):

A. "Yes, By intensive cracking you could get more of your refinery gases but in the situation you should use what there is in Turner Valley".

(Page 16,337 follows)

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And speaking of casing head, Mr. LeSueur at Vol.136, P.15168 states:

"A. That is largely an engineering problem but we do
" use the plant product in our refinery and I think
" we contemplate using it."

Mr. Gaby deals with the subject commencing at Vol. 137, P. 15294, and gives his views on the situation if conservation should have the effect of closing down the absorption plants, and summarizes on P. 15295 as follo

"The shutting down of the gas cap would be serious. It would not be economic for us to continue the present operation unless we could get sufficient crude gas to supplant it with a natural gas with oil content that would be economic to put in the necessary gathering lines "

Mr. Boyd deals with the same matter in some detail and I think Mr. Mahaffy has given the quotation.

Mr. Mayland's evidence, I think, might be fairly summarized by saying that he considers the enforcement of conservation in the manner that he understands the present Conservation Board proposes to put into effect would in short put his operations out of business.

The Chairman in discussing the matter with Mr. LeSueur at Vol. 136, P. 15169, offered a suggestion that I consider most useful. This was:

"I was just wondering, Mr. LeSueur, if you accept the view
"which Mr. Mahaffy puts forward, that the gas-cap extraction
"is not going to have any serious effect on the propulsive
"forces in the crude oil area, and accepting, as I understan
"both of you do, that equity must be recognized in any

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"conservation system, which presupposes the recognition of the status quo prior to some Government getting the bright idea that conservation should be put in at all, and if your company and Mr. Mahaffy's company are the ones only concerned to any extent, might you not each with the help of your engineers, perhaps, meet on common ground for a submission to the Board that would do equity to everybody and would save a lot of fuss and law-suits that proceed to the Privy Council. That is just an idea we throw out. We are willing to hear the evidence. We are not dodging it. with which, in effect, Mr. LeSueur agreed as the proper procedure and offered the use of his engineers and offered to cooperate in any way he could.

MR. FRAWLEY: We never heard about it again though.

MR. HARVIE: No, I think not. Mr. Bronsdon states Vol. 100, P. 11,322 and 11,323:

> It soon became evident that in order to service its customers with all of the Petroleum Products that are available in Western Canada, it would be necessary for the Company to obtain such products as naphtha and natural gasoline as were available in Turner Valley, for distribution in Alberta and Saskatchewan. With this objective in mind, the Company, in 1935, entered into contracts for the purchase of production of gas and naphtha from wells then in operation and contemplated, at a capital expenditure in excess of $450,000.00, and in order to process the natural gas thus contracted for, an Absorption Plant with gathering lines was completed in 1936, with a capacity of 60,000,000 cubic feet, at a cost of approximately $350,000.00."

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There again, it is just a matter that I think has been dealt with by Mr. Mahaffy and by the filing of Dr. Brown's correspondence, which, as I understand, if there is any additional letter or correspondence back and forth, it will be filed and be made a part of the record.

FIELD PRICE.

The next subject, Mr. Chairman, is Field Price. Mr. LeSueur outlines in detail the basis on which the present posted price for crude has been arrived at and states that - (Vol. 128, P. 14269 through to 14283)

"Of course, our figures are $1.20 and $1.28, with the present market. We see no reason why that price is not a reasonable price, permitting of expansion in the Valley, steady development in the Valley and we feel that that price is a fair one today and that the limit of the market and the price should not be disturbed unless there is some real reason for it".

He deals with how any saving in pipe line transportation should be dealt with and at Vol. 128, . 14281 states:

"Q. And that should go to the primary producer?

A. That should logically go to the producer because it is part of your structure in determining your crude price".

He deals with the matter further in reply to a question from the Chairman; (V. 128, P.14319)

"CHAIRMAN: Q. That is your proper price equilibrium as I understand it. As I understand the witness you cannot possibly give this to the consumer and keep on a proper competitive basis, carry

out a proper competitive scheme of fixing your field price, at least a competitive scheme on a proper basis.

A. That is right".

Dr. Brown deals with the matter of field price in Vols. 125, 126 and 127.

In Vol. 126, P. 14100 he states -

"It seems to me that a fair price for 43 gravity Turner Valley crude in the field at the present time under transportation conditions as they now exist, is approximatel $1.30".

"A few cents one way or the other is, of course, undeterminable but it is approximately $1.30".

In answer to a question from Major Lipsett in reference to this price of $1.30, he states: (V. 125, P. 14100)

"That takes into consideration the new pipe line rates, the loading charges, the present transportation arrangements and the present throughput and the present demand but does not include any allowance or consideration for any exchange rates".

This information again appears in Exhibit No. 711 filed by Dr. Brown, at P. 1421.

The following extracts from Dr. Brown's evidence are also of interest. (V. 125, P. 14011) He is asked by Mr. Frawley -

"Q. What is the fair and equitable price for crude in Turner Valley?

A. Based on the statement that has just been made by Dr. Frey, and also by the Chairman, which is that the judgment used in arriving at a price for crude oil

is essentially the judgment as to where the crude can be purchased at the lowest price, taking into consideration transportation, tariffs, yields and other factors which determine the value of crude; and also as soon as that price has been arrived at on the basis of that judgment that then puts that crude in dynamic equilibrium with other crudes with which it is in competition and thereby in equilibrium with all of the crudes throughout the world."

On P. 14012 he states that the price of Cutbank crude 37 gravity is $1.10, and

"On that basis $1.20 for the Turner Valley crude of 43 gravity, which I understand is the current posted price, appears to put Turner Valley crude in dynamic equilibrium with Cutbank crude at Regina".

I think it should be put on the record there, Mr. Chairman, where $1.20 is referred to as the current price that is what it was at that time, that we might read in $1.28 once the new price is put into effect.

MR. COMMISSIONER LIPSETT: Did anyone deal, I do not remember, Mr. Harvie, specifically with the possible objection to that increase that it puts any refiner not utilizing the pipe line at an 8 cent disadvantage, competitive disadvantage as compared with its present position?

MR. HARVIE: I think that is dealt with, Mr. Commissioner, in Mr. LeSueur's remarks, that the price is set on the basis of the competitive value at Regina, and if that competitive value is $1.28 or $1.20 in Regina then necessarily it has to come back to the field and every person take either the benefit or otherwise.

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MR. COMMISSIONER LIPSETT: In other words, this Regina position must govern the situation irrespective of where the chips may fall in reference to any other refiner not using the pipe line?

MR. HARVIE: Apparently that is the fact.

MR. FRAWLEY: Not apparently but inexorable in fact.

MR. HARVIE: Possibly. It will be remembered that Dr. Frey's evidence was interjected and on page 14013, V. 125, he said:

"The posted price of Cutbank crude is $1.10 and it is my belief that it is the correct price."

Then Dr. Brown continued:

(Vol. 126 P. 14044)

"Yesterday I had indicated that the competitive price for Turner Valley crude as shown in the Exhibit "269" based on Cut Bank crude at $1.10, was substantially correct and indicated for those figures used in Exhibit "269" a price of $1.29½ for 48 gravity Turner Valley crude at the well with the transportation charges as used in that compilation; this would correspond with $1.19½ for 43 gravity crude, which is practically the same as the posted price of $1.20".

And he continues: (P.14046)

"which leads me to the conclusion that no effort should be made under the present conditions to seek a wider market for Turner Valley crude by taking any reduction in the crude oil price".

Then at P. 14052:

"Q. THE CHAIRMAN: Now we have heard a very great deal about extending the market for Turner Valley

crude and I want to be quite clear, that it is your considered opinion, your considered judgment, that having regard to competitive prices existing in the nearest competitive point, namely Montana, that it is folly from the standpoint of the producers themselves to try to extend it?

A. Under present conditions, yes, and I am including other factors than the one you have mentioned".

Dr. Brown continues: (P. 14062)

"With freight rates as they are and with the competitive situation as it is and with the quantity of crude which is being daily available in Alberta, it is my opinion that the present market is about the economic market that should be supplied by the crude and that the field will develop best when it is supplying its economic market as it now is".

Later: (P. 14079)

"Let me reiterate that what I say about the present situation is, let me reiterate the fact so that there will be no misunderstanding, that it is folly with the transportation facilities as they now are and with the freight rates as they now are to attempt to force a wider market for Alberta crude by the expedient of cutting the price for Alberta crude".

(Vol. 127 P. 14232)

"Q. THE CHAIRMAN: I would like to know if I understand you right. First I take it that you think there should be no reduction in the price paid for crude oil in Turner Valley?

A. That is correct, no reduction".

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Dr. Frey deals with the subject at Vol. 125 P. 13959 and states:

"A thesis that I want to develop is that the price of crude oil in Turner Valley is not an isolated fact but is related to the price of crude oil in various other parts of the world, and that world crude oil prices tend toward equilibrium. We have what is sometimes spoken of as dynamic equilibrium."

On pages 13979 and 13980 he comments on the posting of field prices by corporations as follows:

"The posted field price, since it is a price established usually by corporations, must represent a consensus judgment of a competitive situation. It is not a price that is determined by the buyer and seller meeting hour by hour or day by day to bargain over what that price should be."

He deals with the the Alberta - Montana competition as follows: (P.13986 and 13987)

"With these general considerations I want to pave the way now to come right down to the question of the field price in Alberta. There are certain necessary relationships which I am going to speak of only in general terms in this Montana - Alberta competition. There is competition between those two areas in Regina."

Now, Mr. Miller was asked his company's views on the matter and stated: (Vol.99 P. 11,184)

"Our views on that are that we follow the posted field price in Turner Valley carefully and we consider it fair, having regard to all the economic situations that enter into the setting of any such price.

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Q. You are talking now about the present price?

A. The present price.

Q. When you say you follow it, you mean you study it?

A. We study it. We have studied it continuously since we became interested in the manufacturing in our own plants in Western Canada. Of course, we studied it before that, but now we study it more carefully than we did before."

Then in answer to a question from Mr. Frawley, (P. 11,186) he says:

"A. As I say, Mr. Frawley, we consider the present posted field price fair and equitable having regard to those considerations and feel that if those factors are changed we will endeavor to see that the new price be posted to give effect to such changes."

MR. COMMISSIONER LIPSETT: Before you pass from that, I can see the theoretical accuracy of this taking Regina and relating that back to $1.20 or $1.30 or whatever it may be at the field and that is so far as Regina is concerned and so far as generally speaking here in Alberta, but does not the other effect of it - and I do not know what consideration you are giving to it - is not the effect of it to make it 8 cents a barrel more easy for Montana crude oil and its products to come into the really competitive parts of this Province. In other words, does it not make it 8 cents a barrel more difficult for your company and the Imperial and other Alberta refineries to get that southern area, that they are having so much difficulty to try and hold at present?

MR. HARVIE: I think, unfortunately, it does,

but just what the solution is is not apparent to me. Apparently the general opinion of those best qualified to speak was that the basis for setting the posted price in Turner Valley is the competitive price at Regina.

THE CHAIRMAN: Why Regina instead of Swift Current or Winnipeg?

MR. HARVIE: Regina is where the majority of the crude that is shipped to the furthest market for refining is refined and it is because the Imperial Refinery is at Regina, or in effect the B. A. at Moose Jaw, we could use either term I think, and that is what they mean by "at Regina" because that is where that crude, the largest quantity is refined, and, therefore, becomes competitive.

MR. COMMISSIONER LIPSETT: If one accepts this theory of competition as more or less accurate, does not this mean that inevitably more Montana crude must come into this southern part of Alberta. In other words, that that southern fringe would he extended further north against the Calgary refineries?

MR. HARVIE: I cannot see but what that is the case, Mr. Commissioner. On the other hand, I think it is just a fact that has to be dealt with as best you can. There has certainly in the evidence been no suggestion it should be dealt with in any other way.

MR. COMMISSIONER LIPSETT: I notice that and it seems to me a rather serious thing. It may be correct but it seems to me a most serious thing for everybody to recommend that this Province should accept that. I do not know what the answer may be but if the theory of competition is correct it looks as if your output and the output of Turner Valley must suffer to some extent by this increased competition in the southern part of Alberta.

MR. HARVIE: It is true. But looking at it from a producer's standpoint, if your thought is, as I take it, that maybe by reducing the price in Turner Valley so that competition in southern Alberta can be better met, that would mean a reduction on a great deal more crude than is used to supply that market and the net result to the producer would be he would receive considerably less than he would if the price was kept low enough to compete against Montana in the Southern Alberta market.

MR. COMMISSIONER LIPSETT: I see that, but it is rather different from, on the one hand, accepting the present price under which we compete with some success but with great difficulty as against the other alternative that by increasing it by 8 cents or 10 cents and making your competitive position that much worse, for the sake of the correct theoretical picture.

MR. HARVIE: There are two situations. One is to keep the proper equilibrium field price in connection with the competitive market price for crude; and the other is just to deal with the situation in connection with the refined products. Quite frankly, I do not know that I can be of any further assistance on the point.

MR. COMMISSIONER LIPSETT: We have no evidence at all as to what diminution in the output of Turner Valley would result in the southern part of Alberta from the 8 cent increase. There is no evidence of that at all.

MR. HARVIE: I think not.

MR. COMMISSIONER LIPSETT: Mr. Harvie, as the Chairman has just pointed out, the position I was putting to you was really the position at the present moment. But prior to the reduction in the pipe line rate there is no alteration in the position

prior to that date. You will have 8 cents less on the pipe line and you are giving that 8 cents to the producer. So there is apparently no alteration in the competitive position as it existed prior to the pipe line reduction.

MR. HARVIE: Not as far as the cost of the crude at the refinery is concerned.

MR. COMMISSIONER LIPSETT: Perhaps that is the answer.

THE CHAIRMAN: That is on the assumption that it were to be given to the producer.

MR. HARVIE: Yes, which so far is purely an assumption, as I understand.

PIPE LINE

Now, dealing with the pipe line, Mr. LeSueur at Vol. 129, P. 14,346 said:

"A. Mr. Commissioner, I feel that the only sound way is to follow the present principles in vogue and that following sound practice, possibly the next real step in helping Turner Valley is the pipe line to Regina; that would be practically the next step if it were decided upon and would not be running against your sound principles on a competitive basis; it would be more or less in accord with sound principles because it would possibly reduce your costs from here to Regina and naturally spread your market out."

Mr. Gaby on the same subject: (V.137, P. 15,288) said in answer to a question by Mr. Commissioner Lipsett:

"Q Yes, and there was another thing, I do not know whether you can give us any general view about it, and that is in reference to this pipe line. We got an expression

from Mr. LeSueur as far as Regina was concerned and I was wondering if your company has any views about it?

A. Yes, we had prepared estimates prior to the time we received the reduction in freight rates and it was our opinion that it was economical to construct a pipe line to Regina in competition with the rail rates then in existence.

Q. That was in comparison with the old freight rate, was it?

A. And even the new freight rate, although there is a close relation, it is, it would be economic to build the pipe line with all of the information we have now available as to the reservoir capacity of Turner Valley to meet the market."

Mr. Campbell outlined in some detail the pipe line and deals with the effect of his projected pipe line on the present line to Calgary, as follows:
(V. 138 P. 15,417-15,432)

"Q. But the capacity of the existing main line transportationn of the Royalite Oil Company is not sufficient for your purposes?

A. No, we would have to connect with the field.

Q. MR. HARVIE: It likely would not be routed through Calgary anyway, would it?

A. I would not think so. And the oils consumed in the Province are not taken into consideration at all."

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REFINING

Dealing with the purchases of crude on the open market Mr. Woolley states: (V. 34 P. 4181)

"Q. Mr. HARVIE: And you as a refining company in Canada buy on what we might call 'on the open market'?

A. We buy on the open market.

Q. And not necessarily from your own Company?

A. No, sir".

And later on: (V.34 P. 4190)

"Q. MR. HARVIE: On that point, do I understand that if it was economical and money was to be made out of selling your own crude and buying another crude cheaper, that would be your policy?

A. Yes, sir.

Q. In other words you would buy for refining purposes the cheapest crude?

A. Exactly.

Q. Regardless of what crude you had of your own in the producing company?

A. Yes."

Dr. Brown, dealing with refining, (V. 77, P. 8920) said:

"So the actual cost of processing crude oil in a refinery to convert it into gasoline, distillates and other finished products depends in a very large measure upon the amount of crude processed through the refinery. In fact I believe that may be safely stated to be one of the most important variums. There are differences in efficiency and differences in other operating costs but that one factor makes more difference than practically all the rest put together."

And continues: (V. 77 P. 8920)

"In the United States, with operations with which I am more familiar, we find operating costs of a plant of around 5000 or 6000 barrels througnput vary over quite wide limits and based on the experience I have under United States conditions, and making some allowance for increased costs in Canada due to increased costs of equipment and also it appears that with a refinery out here in Calgary far removed from other technical staffs, such as there might be in the East, they have to maintain adequate technical staffs here to answer all of their problems, it seems that the operating costs here at Calgary may vary apparently about oh, 5 to 10 cents per barrel than we might expect to find in the United States under similar conditions".

Then at V. 77, P. 8921 he says:

"Take for example a plant built in the United States, a modern plant with 5,000 or 6,000 barrel capacity. It can be built down there for a certain cost. I have not had charge of any erection work in Canada, and I do not know the exact difference, but as near as I can estimate, the cost of constructing that same plant in Canada, a place such as Calgary, might be from 25% to 30%, or possibly more, due to tariffs and other conditions".

Questioned by the Chairman (V. 127 P. 14,237) Dr. Brown states:

"Q. THE CHAIRMAN: If I understand you aright, any reduction in the price of gasoline at this time, by the refineries if you like, would be something which would not be called for?

A. I think that statement is correct."

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And later:

"Q. THE CHAIRMAN: In short, you think that the operation as conducted today in respect of, at least, the two companies into whose affairs you have examined, shows a picture that is not an unreasonable one?

A. That is right."

Mr. Bronsdon, dealing with Refining, states : (Ex. 475. P. 2 & 3.)

"The refineries at Coutts and Moose Jaw, supplied our entire requirements of Petroleum Products in Western Canada, including Alberta, British Columbia, Saskatchewan and the western part of Manitoba, during 1934, 1935 and the greater part of 1936.

In June 1936, the Company was instrumental in assisting in bringing in the first crude well of large capacity in Turner Valley, which established the present crude area on the Western flank of Turner Valley. This crude was delivered for processing on its account to the Imperial Oil Company's Refinery at Calgary.

In October, 1936, after considerable negotiations, a reciprocal Refinery Agreement was executed with the Imperial Oil Company to provide for the refining of crude available to The British American Oil Company from its Turner Valley contracts, at the Imperial Oil Company's Calgary Refinery, and an exchange agreement for the refining of the Imperial Oil Company's Cutbank crude in our Coutts Refinery, the finished products of which supplied the economic areas lying adjacent to these two shipping points.

About October, 1937, due to the production of crude oil in sufficient quantities in Turner Valley, the Imperial Oil Company discontinued supplying us with Montana crude for

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processing to their account at Coutts. This reduction in crude runs at Coutts made it unprofitable to continue the Coutts operations, which were therefore discontinued at the end of 1937 when our contract for crude terminated and at the same time processing of Turner Valley crude at the Imperial Oil Company's refinery at Calgary was increased. Notwithstanding the accumulation of petroleum stocks of finished products at Calgary through our Processing Agreement in the early part of 1938, it was soon realized that with the crop prospects, increased supplies would be necesary. This, along with the curtailment of the amount processed by the Imperial Oil Company on our account, made it necessary for us to reopen both Coutts and Bell Refineries in August, 1938, to take care of our market requirements. In July, 1938, we were notified by the Imperial Oil Company that it would be necessary to curtail the amount processed on our account from 1,500 to 900 barrels per day. This continued throughout the balance of the year and until the opening of our plant on the 1st of May, 1939.
The curtailment of our Processing Agreement to the minimum and the inability of the Imperial Oil Company to increase same without extensive additions to their plant, required that immediate action be taken to provide further refinery capacity to meet our market demands. After very full consideration of all the factors and avenues left to the Company to obtain additional capacity, it was finally decided to build our own Refinery in Calgary, which was completed by May 1, 1939."

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On the subject of Marketing,

Mr. Miller States:

Ex. 442
Page 1-A. Climatic conditions with long winters and heavy snow-fall together with the lack of Main Highways, secondary and rural roads, and poor conditions of these, resulted at one time in farm consumption of Petroleum Products being 85% of the total as against 15% for urban motor car trade.

2. In the past ten years Highways and secondary roads have been improved and others constructed.

2. The division of consumption of Petroleum Products is now 50% farm and 50% motor car, with the prospect of an even greater consumption by motor car as against farm, the division in his opinion reaching 75% motor car consumption as against 25% farm trade.

1-A. There was only a seasonal demand for Petroleum Products.

1-A. He points out when we began business in Alberta only one grade of Gasolene and Kerosene was necessary.

1-A. & 2. Improvement in farm machanics and in engines has made several grades of gasoline and other products necessary.

Mr. Miller then dealt with the old method of distribution comparing it with the new method just instituted by The British American Oil Company Limited, and pointed out at

Page 2. B. A. Oil will scrap 254 former bulk plants on railway property and make a new distribution set-up based on 31 main bulk company-operated branches, and an increase of several hundred combination wholesale and retail outlets, giving wide distribution throughout the entire Province.

2. This new distribution will make it possible to supply the requirements of the farmers at all seasons of the year and the farmer will be able to pick up his products at the plant at any time without delay, making the Petroleum Products readily accessible to farmers everywhere, particularly when weather conditions do not permit of free delivery.

2. On referring to map, Ex. 318, of the Province of Alberta on which is shown the 1049 wholesale distributing plants scattered throughout the Province of Alberta, he gave it as his opinion, based on his experience, and as a result of information received from the questionnaire submitted to his agents, that these outlets were not half enough to give facilities and services to the farmer consumer that he should have to meet his present day requirements. This is clearly emphasized by the study of Ex. 444 - Chart 16 - being an analysis of the answers received from the questionnaire submitted to agents.

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Volume 2. of Mr. Miller's brief.

Ex. 443
Page 1
Statement 1
Graph 1

Mr. Miller submitted and filed graphs and statements showing that prices have been reduced in Alberta to a greater extent than in any other areas in Canada over the past ten years.

Pages 2 & 3
Statement 2
Graph 2

Mr. Miller compared the Retail Prices in Montana over the years, 1936, 1937 and 1938 with those in Alberta and showed that in 1938 Alberta prices averaged lower than Montana by 1.88¢ per gallon.

MARKETING COSTS

Ex. 443 Vol. 2.

Mr. Miller made the point that Marketing Costs are higher in the West than in other areas of Canada due to local conditions beyond the control of the oil companies:

Page 7. XX. Firstly; in the West the population is scattered as against highly concentrated population in the East. In Ontario the population per square mile is 9.5 against a population of 2.94 in Alberta, or in other words, three to one.

7. (b) The percentage of farm business in the West is much greater than in Ontario.

7 & 8. (c) The population in the West is largely rural - and the population in the East urban. In Ontario the urban population is 61.07% as against 37% in Alberta.

7 & 8. (d) Taxable products consumed in the West over the area of distribution approximates

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263 gallons to the square mile as against 12,994 gallons to the square mile in the East.

I think that is a most interesting comparison and I will just read that again if I may.

7.& 8. (d) Taxable products consumed in the West over the area of distribution approximates 263 gallons to the square mile as against 12,994 gallons to the square mile in the East.

7.& 8. (e) A further example is that Car and Truck registration in Alberta in 1938 totalled 99,158 against 284,187 in Ontario.

9. (f) Climatic conditions in the West when compared with the East are more severe.

9. (g) Also roads in the West are not nearly so well developed as roads in the East, and are more liable to be closed in winter

P. 9 & 10 Mr. Miller made the further point in comparing the trend of business in the West with the East.

Ex. 444
Graphs
7 to 10(b) Business in the East is fairly uniform over the year as against high peak periods in the West - that is 44% to 51% of the business is done within a four-month period in the West.

Page 10 We require greater facilities in the West for handling smaller gallonage.

Vol.93
P.10573 He further pointed out that with the various fluctuations in demands in the West and the uniform nature of the territory you cannot isolate Alberta and discuss Alberta conditions alone,

but must take the three Prairie Provinces as an economic unit.

Vol.93
P.10574
10576

Mr. Miller made the further point that there were no price increases to carry losses in specific areas like Southern Alberta and Southern Saskatchewan, but such losses are taken care of in the whole picture covering Canadian wide operations.

Vol.93
P.10601

He developed the question of discontinuing the loaning of drums and developed this on several occasions, pointing out that if loaning of drums were discontinued we would save .24¢ per gallon.

P.10602

His proposal would be to sell the drums at a reasonable figure until we were rid of them, then let the customer supply his own containers.

THE CHAIRMAN: What about the drums which are now out, what would you do about them?

MR. HARVIE: His proposal would be to sell the drums at reasonable figures until they get rid of what they have and then let the customer supply his own containers.

THE CHAIRMAN: That is to say, a farmer who had a drum for a couple of years, you would go to him and sell him that drum?

MR. HARVIE: Yes.

THE CHAIRMAN: All right.

MR. HARVIE: Those drums are continually being turned in and refilled and so on, it is not as if the farmer took one drum and kept that indefinitely but as it comes in they are collected by the dealer and I think that would not

be an impossibility or even a little difficult situation to carry out.

MAJOR LIPSETT: I suppose the idea would be to sell them at something like a depreciated value?

MR. HARVIE: Oh, yes. I imagine so far as the Company is concerned at quite a nominal value in order to clean up the situation, that that would be quite agreeable.

THE CHAIRMAN: You mean by that what? All these things are up in the air but it is important to the farmer, supposing we accept that view ----

MR. HARVIE: Yes.

THE CHAIRMAN: All right, what should the farmer get those drums for, you see some are worse than others?

MR. HARVIE: I would say that subject to excess depreciation or damage, that the average life of the drum amounts to from 10 to 15 years and that it would be depreciated on that basis, over that basis, and that value would be the fair one; in other words if a drum has been in use 10 years and its useful life is 15, then one-third of its new value would be a fair price today.

THE CHAIRMAN: And you have no figure to suggest?

MR. HARVIE: Unfortunately, I have not, Mr. Chairman. We are at the moment having an assessment appeal on with the Province, just on these various matters and while I have some figures I am afraid they are not in evidence. I would be glad to submit them if they would be of any assistance.

MR. FRAWLEY: Of course, speaking for myself and if you think they would be of assistance and the Commissinn agrees, the Commission might receive them.

MR. HARVIE: Generally speaking the evidence, I believe, is this, that the estimate of the useful life of a drum is 15 years and that they should be depreciated at least on that basis and they are asking to be assessed on that basis.

THE CHAIRMAN: You say the useful life of a drum might be 15 years yet the original cost of the drum may have gone down greatly in the past 10 years.

MR. HARVIE: I think there would be no objection taken to today's cost, giving effect to depreciation on the basis of today's cost.

THE CHAIRMAN: You have depreciated them in your accounts at less than 15 years possibly, have you not, probably wrote them off over a 10 year period?

MR. HARVIE: Mr. Cottle, do you remember the rate that they are treated at in the accounts?

MR. COTTLE: No, the Income Tax depreciation is 7½%, that would be 13 years.

MR. HARVIE: Yes, 13 years.

MR. COTTLE: But that has not necessarily any relation to the actual useful life of the drum?

MR. HARVIE: Oh, no.

P. 10589 Information was given setting out the Gasoline Tax History for each province, specifying the amount of tax at different periods and the dates on which the tax was increased, also the amount of refund allowed.

Ex. 443
Page 11.
St'mt.15. Mr. Miller pointed out that the elimination of the British American Oil Company's entire marketing investment in retail facilities

would not afford any appreciable saving in B. A. cost of operations, or afford a reduction in tank wagon prices.

He pointed out the saving to be effected by eliminating the retail facilities on the basis of the gallonage handled would only amount to a saving of 2/10¢ per gallon.

Ex.443
P.12 & 13.
St'mt. 12.
Graphs 12
& 13 in
Ex. 444

Mr. Miller pointed out if there were no proper facilities for distribution and the farmer suffered loss through degradation of wheat due to weather, etc. the loss could amount to 2.69¢ per gallon to the farmer.

Mr. Miller produced and filed "Wheat Yield" figures, values, etc., covering the preceding eleven years.

These statistics and statements covered Western Canada and the Argentine. He emphasized the effect to the latter of improper handling facilities for grain.

Volume 3 of Mr. Miller's Brief

Ex. 468
Page 1

Mr. Miller pointed out that he does not believe our marketing Costs, together with our operations, should be judged on the basis of any one year, particularly 1938. Costs should be judged on a ten-year basis, and insofar as the West is concerned, it should not be the cost of any particularProvince but the cost of operations in the three Provinces combined.

Vol. 99
P.11,154-5

Evidence was given as to the amount out on credit year by year from 1929 onward,

covering the period companies found it necessary to finance the farmer due to the banks withdrawing their support and the amount of money which the oil companies were forced to carry in farm credit right down to the period where advances were guaranteed by the Government.

Ex.468
Page 2

There was a discussion on the wide variation in marketing costs in the Province of Saskatchewan, also a comparison of Manitoba with Alberta, it being pointed out that distribution of costs in Alberta has benefits by the volume in the other provinces.

Ex. 469
of
(Graphs)
Ex.444-10-11
Ex. 469

Mr. Miller presented graphs showing the relation of sales to costs per gallon over a ten-year period in Alberta, Saskatchewan and Manitoba, and the three Western Provinces combined.

Vol. 98
P.11,104-5

He remarked that you cannot cut our costs over night. We have to build an organization and the organization cannot be broken up just because one part of the territory happens to go bad in any one year.

Ex. 468
Page 3

He emphasized the point that normal reductions in prices to the consumer by the industry would have the effect of increasing the volume, but that in fact all savings that had been effected by the industry over the last few years had been in a large part, if not entirely, more than offset by the imposition of increased gasoline taxes.

Vol. 97
P.10, 965

He also illustrated the one hazard that the industry was faced with every year, occasioned through crop failures in various districts. He stated that in order to meet the high peak demands in the Spring and Fall it was necessary for the industry to carry large stocks of supplies at all distributing points throughout the West, and to a large measure these had to be moved before crop conditions could be definitely known. In the event of failure in any district it meant they were left with large supplies on hand for which there would be no market until the following year. In some cases, in order to keep the stock fresh, it meant returning the stocks to the refinery for re-running, and the additional costs incurred in this respect can be easily realized. He gave the figures that in 1938 the Company carried inventories of $11,000,000. of which six to seven million was in the West.

Vol. 97
P.10,963
Vol.99
P.11,177-80
Ex. 472 &
473

In answer to Mr. Frawley's query as to why costs should be considered on a ten year basis instead of a one year basis, Mr. Miller emphasized that we should consider the crop situation, the price received for the crop, weather conditions, and the agricultural situation generally.

Vo. 99
P. 11,204-5

In connection with ---

THE CHAIRMAN: Would you like a recess?

MR. HARVIE: Thank you, please, sir.

(An adjournment of five minutes was here taken.)

MR. HARVIE: I will then continue:

Vol. 99
P.11,204-5

Mr. Miller in dealing with the practice of leasing stations said:

In connection with the practice of leasing 'company owned' or 'leased' Service Stations to Operators, he submitted figures that showed that the Company had done better than collect the amount of taxes and rentals paid, but that after paying other costs, such as repairs, painting and upkeep, the costs of doing business through such service stations amounted to 1.69 cents per gallon, which was less than the cost per gallon of the gallonage sold through other outlets such as their branches and agencies.

DISTRIBUTION

Ex. 444
Page 16

Mr. Miller filed information compiled upon the returns of Agent's Questionnaires, showing gallonages handled, average deliveries, etc.

Ex. 443
Page 17.
St'mt. 17
Graph 17

He introduced analyses of 21 agency points, giving the comparison of operation on present basis as against operation under an exclusive franchise to one company, and established that operating on an exclusive franchise basis would not be any cheaper than on the present basis.

Vol. 93
P.10,562-3

Dealing with Drums, He says:

"Again, In Western Canada a large "drum investment is necessary in order to give

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"service to the farmers, particularly during
"the peak harvesting season.
" The oil industry, '

and I think he means there the major companies,

'have over the past ten years been the only
"companies that supply containers in order that
"the farmers can secure their products, not only
"from the Company that supplies them with the
"container, but from the Turner Valley or any
"other company or price-cutting operator where
"they feel fit to buy. In other words, these
"drums entail a large investment, and they are
"not only used for our products."

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P.10,591
-2

Mr. Miller said that Drum write-offs are pretty tough, in many cases because of the abuse these containers get and the mere fact they are supplied free by the oil industry, notwithstanding the fact they cost us $9.00 apiece. Otherwise, I suppose if they were charged for they would not get the same abuse.

And on being questioned by the Chairman, he said:

"Q What is your view about that, as to that practice
" continuing?
"A Well I think ----
"Q We have had other views about it and we will welcome
" yours.
"A Well at one time these drums were, probably it is a
" mistaken idea to say that they were not loaned before,
" they were loaned except we received $8.00 for the

" drums and if the drum did not come back in good
" shape, we did not refund or we only refunded that
" portion less the cost of repairing the drum and
" we had the use of the $8.00 while they had the use
" of the drum. Then it came to leaning drums and as
" far as I can see it is something that never should
" have been. I think that our products should be
" sold f.o.b. our warehouse in the same manner as in
" the United States. The United States went through
" a drum situation similar to what we have done in
" Canada and they got away from it and in many areas
" of the United States today you cannot even buy a
" drum. They do not sell them and they do not loan
" them and I think that the consumer ----

"Q THE CHAIRMAN: That is to say they have to get
" their drums from somebody who is in the business of
" making drums?

"A MR. MILLER: That is right, sir. The consumer
" I think should furnish his own container for the
" product the same as the dealer has to furnish his
" own equipment for the product he buys."

(Go to Page 16,367)

E. L. Harvie, K.C. -16,367-

Then question by the Chairman, (Volume 93, P. 10597-8),

"Q. CHAIRMAN: And it would not have the same effect on the cost of carrying on business?

"A Everything adds to these costs, sir. As I said this morning I think we have 50,000 drums in the Province here and our drum investment for the farm business in Western Canada has run as high as a million and a half dollars, ranging from 15 to 30 percent of our total investment on the Prairie Provinces and when you come to think of the fact that those containers leave our place and they go out and are used as water carriers, the ends taken out and used as hog feeding barrels.....

MR. FRAWLEY: "And used as stoves".

"A And made into stoves and things like that, why it adds to our cost of doing business.

"Q All at the expense of the people who buy gasoline?

A Then the most disturbing thing of all is, or at least it is to me, we pay $9.00 apiece for them and we sell a barrel of merchandise that nets us on the invoice about $5.95 and the drum goes out and we never know whether we will see it any more and I cannot see, make that thing add up, to make it look economy so far as I am concerned; the other disturbing factor is that the major industry, amd I think I am right when I say this, the major industry in Western Canada have provided the barrels for the consumer and it has been unnecessary therefore for all the other classes of operators

"who come today and go tomorrow or stay in business for a short while, they are able to reduce their prices because of the fact that they do not make this kind of investment. They use our packages. the Imperial Oil Company's or the North Star or our company's or anybody else's. They buy very few drums and the evidence of that is that there are only two people manufacturing drums to any extent in Canada, the Western Steel and the National Metals, Limited, and if you take the total business and check the total number of drums purchased outside of the major industry, during the last ten years I think you will find that statement is correct.

"Q CHAIRMAN: I am sorry to interrupt you, Mr. Miller, but just to pursue that for a minute, supposing that a scheme could be put into effect by proper means, whatever the means might be, whether by agreement amongst the parties who loan drums or by government edict or otherwise, that the practice would be put an end to, what would the saving be to your company let us say in dollars and cents per annum, roughly?"

Later during his evidence he gave that figure as .24 cents per gallon. (V. 94, P.10636). Mr. Miller made the point that under the old system of operation of B.A.Oil Company we would save .7285 cents per gallon and under the new B.A. form of operation .50¢ per gallon if free delivery were cut out. This would be

coupled with the saving of .24¢ per gallon of drums were eliminated.

(V.98,P.11041 . Exhibit "443",Statement 17,P.32.
V.94, .10636, Exhibit "452".)

Mr. Miller compares Alberta prices with Montana and says:- (V. 96, P.10836).

"A. I want to impress that upon you, Mr.Frawley, and the Commission because I have judged that the main point as far as you are concerned, is that the prices in Alberta are too high, and when you consider our cost of operation in the Province of Alberta compared with the State of Montana, and then find that we are selling gasoline, of equivalent measure, at ¾¢ a gallon less than their lowest price, I cannot see that our prices are too high."

And (V.121, P. 13,584-5)

"A Our basic price in the Province of Alberta is lower than that prevailing in the State of Montana, as at July 20,1939; which is as follows: Calgary Net Tank Wagon 14.756¢ which is 15.50¢ less sales tax, as against the price at the four basic points in the State of Montana of 15.00¢ for an equivalent gallon, which prices are figured as follows

CALGARY		MONTANA	
Net T.W.	15.500	Basic Price in Wine Gal.	18.50
Less Sales Tax	.744	Less Taxes	6.00
			12.50
		Add 1/5	2.50
Basic Price	14.756	Basic price in terms of Imperial Gallon	15.00

that is roughly a quarter of a cent difference there.

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Mr. Miller was asked to file on behalf of the Company a considered view as to the policy of selling to farmers at an f.o.b. warehouse price, and states (V. 99, P.11143).

"A. Our view is that it would be more satisfactory to have one price f.o.b. warehouse for farm deliveries, providing the authority or government agency would enforce compulsory elimination of free delivery;, in the event of this not being possible, two prices, one for delivery and the other f,o.b.our warehouse may be advisable and it is our intention to establish same in the future notwithstanding the probability of increased costs on individual deliveries."

Mr. Miller then deals with the 1¢ discount to 100% dealers and says:- (V.100, P.11,300).

"A. Speaking personally for our company I would have no objection to the authorised buyer's agreement being discontinued and the dealer being sold at tank wagon market and we will sell our merchandise on its merits, we will take our chances with anybody else as to being able to create that consumer demand for our products to take care of the sales we wish to make.

Then on Marketing, Mr. Gaby, on questioning by the Chairman, (V.137,P.15294) says:

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"Q CHAIRMAN: Well Mr. Gaby, how do prices for petroleum products in the Province of Alberta compare with the price obtaining in comparable places in other parts of this Continent?

"A MR. GABY: I would think that the most comparable place would be Montana and the tank wagon prices for the standard grades in Alberta from the information that I have are lower than they are in Montana. I think Mr. Miller gave a fairly close exposition of the conditions existing in Montana and Alberta. And the prices notwithstanding the low density of population and the low density of the gallonage per station and per branch in Alberta, I would say that the prices in Alberta due no doubt to geographical conditions are lower than those in practically any of the provinces having regard to those conditions, in Canada."

Dr. Frey deals with the question of marketing and states: (129, P.14407).

"The next subject is the passing of savings to consumers. Lower costs resulting from economies in operation are passed on to the consumer in the form of lower prices, better products and better service."

Later (V.131, P.14540):-

"The rent paid by the service station fails to remunerate the supplier company, in the case of the Imperial, approximately 1.6 cents a gallon".

He deals with the situation and summarizes on P.14544:-

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"It seems to me that part of the problem is taking out of one pocket and putting into another."

He continues (P.14544), "There are probably more filling stations than necessary. There probably has been duplication. This duplication in terms of the total cost to the Province is, according to the testimony given, a relatively small percentage of the total. Less than 1%."

Then when questioned by the Chairman (V.131, P.14575-6):-

"Q THE CHAIRMAN: I understand that, Doctor, but leaving aside political considerations, because, believe it or not, for once you see a Commission that does not care a tuppence about political repercussions, but from the economic side only, if I am following you aright, you think that the good of cutting down service stations by any means may in the end be outweighed by the disadvantages of eliminating competition?

"A There is that possibility and it is a very strong possibility. I should rather say that it would be a safer action to use every possible discretion in preventing any increase in the number, with the increase in gallonage taking up some of the slack and with the oil companies ultimately recognizing that they are "dog" stations, it does not pay to seek to maintain them."

And then he continues: (V.131, P.14581).

"Now the item of cost. In the item of cost, the very fact that you are giving distribution throughout

the entire province on one-sixth of the difference between the economic and actual rents in Calgary indicates that there is a relatively high efficiency in that type of distribution and I cannot help but believe that the duplication, as far as the public paying for it is concerned, is more apparent than real."

Then Dr. Frey deals with "Split Accounts" and summarizes:- (V.131,P.14587 to 14591).

" But fundamentally, I think that it comes down to another thing and that is the best merchandising methods can be developed where there are exclusive dealing accounts and I should say it is entirely a matter of company policy and it is another one of those elements in competition as to whether a company would take a very large split account and give the same price as to a 100% account. I do not see that economically it is wrong because it clearly indicates that we are dealing with competition."

Dealing with "The Profits of a Company" he states:- (V.132, P.14789).

"Now I also recognize that there is a danger in that situation of generalizing too far about things on the experience of one Company in particular detail and quite a number of other Companies in lesser detail".

Questioned by the Chairman at Page 14790 he said:-

"Q. CHAIRMAN: That is to say you say it

"would be a wrong view to take the standard of excellence of the biggest Company and say all others should approximate to that or go out of business.

"A I think it would be very dangerous. It might destroy competition and I do not think it is desirable to destroy competition because the ultimate result that we want is free competition."

Then at V. 133, P.14896 questioned by Mr.Frawley:

"Q MR. FRAWLEY: What is your view, Dr. Frey, as to whether or not the farmers of Alberta or any other kind of consumer purchasing in drums should be given the drums free?

"A It seems to me it would be asking a great deal to ask the Oil Company to give drums to the farmers free, and yet really that is essentially what they have done."

COMPETITION

Dealing with competition Dr. Brown said, on a question by the Chairman. (V.127 P.14242)

"Q CHAIRMAN: Doctor, you say, as I understand you, and I want to understand you very clearly, you say "all that I have said is predicated upon a supposition which I believe to be a fact that the competition is real?"

A That is right.

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Dr. Frey states, (V.132, P. 14665).

"A I think that is again one of those things what is so subtle that we are commonly not given to accepting the subtleties of competition. We think that all competition must be immediately price competition; prices ultimately reflect the total of competition of the competitive effect and not just the price effect."

And in answer to the Chairman (P.14766):-

"A. I would go so far as to state that the competitive system in Alberta is so intense that there is no possibility of a consumer paying more than any other consumers in North America, in considering the geography under which they live. There is no evidence that I know of that extortionate profits are being made and the consumer is not in the hands of any one company, and no one company is making so much money that we have any fear for the consumer in Alberta. I think the consumers are getting a product of a higher grade than they used to and the profit to the companies operating that indicates that there is no extortion being practiced by those who are engaged in the Industry."

Mr. Gaby deals with competition, (V.136, P.15255 to P. 15259).

At P.15264 he states:-

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"Natural economic forces are adequate to keep business on a sound basis when honest competition is evident and Government regulation is only justified when economic forces fail through unsound ethics."

Then later (P.15272)

"Q MR. FRAWLEY: Now I have something more interesting to discuss, or perhaps it is more interesting with you. You say that there is lots of competition in Q gasoline in Alberta?

"A I would say yes, there os lots of competition."

And later (P.15274):-

"A I would say, competition was working.

"Q In the third structure?

"A In the third structure."

At Page 15,275, Mr. Frawley:

"Q It would not be fair to ask you to go into much detail. Mr. Halverson may have to come and tell us about it but I had planned to get your opinion, because you agree with the rest of the majors that there has been a great deal of competition in "Q".

THE CHAIRMAN: Do you mind reading that last statement again?

MR. HARVIE: "It would not be fair to ask you to go into much detail. Mr. Halverson may have to come and tell us about it but I had planned to get your opinion, because you agree with the rest of the majors that there has been a great deal of competition in "Q". That is a statement by Mr. Frawley.

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MR. FRAWLEY: But I began to point out to him, direct his attention to and ask his opinion about the state of affairs where "Q" was the same for two and a half years and third was moving. That was just the introduction and then I proceeded to question Mr.Gaby.

MR. HARVIE: I make that statement and then there was a lot of interruption and I am coming now to what I think was the reply. Dealing with price reductions from the 29th October, 1930 to the 2nd of February, 1936, Mr. Gaby states: (P.15279).

> "Mr. Frawley, from the information that you submitted, certainly competitive factors must have been at work or there would have been no change during that period of that price."

Mr. LeSueur, dealing with competition, (V. 136, P. 15,199) states:

> "The second factor which I would like to point out is that Imperial Oil's share of the available business in taxable products within the Province of Alberta, exclusive of jobbing business, dropped from 35.71% in 1934 to 31.03% in 1938. This loss, I can assure you, has been sustained in spite of all the efforts which Imperial Oil has been able to put forth and is a very definite proof of the existence of competition."

Mr. Halverson, (V.137, P.15,397) states:

> "First of all there is a great deal of confusion in the last two or three years that there has been no competition in "Q" brand, so we have prepared a statement for the Commission which we have given to

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"Mr. Frawley which indicates that since February 3rd, 1936, the price of third structure (3 Star) gasoline and Ethyl has been reduced in price 7 cents per gallon; whereas the cost of raw material, during the similar period has only been reduced 3.7¢ per gallon."

And Mr. Gaby, (V.137. P.15,305):

"I think competition is very restricted in Nova Scotia at the present time as a matter of fact. There are run-arounds on the various laws which have been passed. You know what prohibition does, it is human nature to provide ways and means to overcome that prohibition and no doubt that has been done, is being accomplished to a very large extent in Nova Scotia but there is still a freezing of franchises which has to a large measure cut down the service which the public is receiving in that particular Province."

TAXATION

MR. HARVIE: Then I deal with taxation. Mr. Gaby at Volume 136, P.15264 and 5 says:-

"Lower prices can only increase purchasing power for the consumer within the limit of the budget of the average man and, conversely, higher prices reduce volume to his limit in the ratio of availability to his needs, but with higher prices brought about by increased taxation and regulations, employment in

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"Industry is lessened with the resultant lowering of the purchasing power of the community.

" Excessive Government taxation is an impediment to provress and a lower standardof living is brought about by such increase of taxation, which, along with regulations is playing an important part in increasing the cost to Industry. Increased direct and indirect taxation, is in many cases equal to the economics effected by the increased volume, and technology experienced and utilized by the Industry. The evident indications are that a point is being reached in may localities where future economies cannot keep up with increased taxation. Notwithstanding the efforts of the Industry to economize in the utilization of science and improved methods on its operation.

" The industry cannot perform miracles and it has reached the point, in order to maintain good service and its volume position, where increased costs, through uncontrollable sources, must be discontinued or revenues increased.

" The ever increasing volume that the Industry has experienced in the past due to the rapid development of the Automotive Industry, cannot be expected for the future. The density of population and car ownership, per unit of population, is becoming stabilized by saturation. The improved performance of the motor car has also reduced the volume in proportion to the mileage.

" This has been very effectively illustrated by the Graphs which have been

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"submitted showing the reduction in price of gasoline and the increase in fuel tax imposed by Governments."

Mr. LeSueur (V. 136, P.15,182):

"CHAIRMAN: Q. How do you feel, Mr. LeSueur on the subject of taxation?

A. Well the oil industry of course has been very heavily taxed both directly and also as a means of obtaining revenue from the public. It offers in that way perhaps a very cheap mode of collecting taxes and the Government in their needs and pressure have taken advantage of that and I feel that taxation of the industry is extremely heavy. The putting of a sales tax on the gasoline which is sold necessarily, when it gets to a certain stage, restricts consumption and that is one feature which I think the oil companies would think it has gone as far as it possibly can go. Of course under the direct taxes we do pay very heavy taxes. I think the Imperial in 1938 paid to the Canadian Government over $4,000,000.00 in taxes and their total earnings in Canada were about 3½ millions; of course that is by reason of dividends received from South American subsidiaries to a certain extent but the results still stand, that that is what was really paid."

And later (P.15,184):

"I believe the average tax all through the States is about 4 cents per wine gallon, whereas here

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"it runs from 7 to 10 cents for the Imperial gallon and the difference is quite marked, but as to the theory of taxation and how it should be spread I would hesitate to make any pronouncement."

Then Mr. Meltabarger said at (V. 90, P.10,243)

"It is to be noted from this that the Province derived from oil royalties and lease rentals, gasoline and fuel tax and automobile licenses a total of $4,460,911.99, or a little more than one-half of its total tax revenue.

CAPITAL

Dr. Brown gives his views on the amount of capital on which a rate of return should be allowed (V.127, commencing P.14,249 to 14,253). I have not made any express quotations.

Mr. Gaby deals with the basis of determining capital employed on which a return should be allowed. (V.136, P.15,250 to 15,254). as follows:-

p.15,251 "The theory of depreciation is founded on the belief that justice to the public and to the undertaking can be obtained only when the fair value upon which rates can be based is ruled to be, as nearly as may be capable of determination, the proper investment of shareholders' in the enterprise (neglecting for the present

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"any question of the unearned increment), provided there is always maintained that value by adequate reserves to make good the loss in the value of the investment arising from the years of service.

p.15,252 If the property consists of plant and money properly invested, the value of the property is that sum which can be proved to be capable of use for the benefit of the public.

p.15,253 Investment in property, not plant, is ruled by Courts as basis of fair return.
The Supreme Court (U.S.) has said "It is entitled, it is its duty, to see that from its earnings the value of the property invested is kept unimpaired, so that, at the end of any given term of years; the original investment remains as it was at the beginning." It must be noted that the court says that it is the value of the property, not value of the plant."
(Knoxville vs. Knoxville Water Co. 212 U.S. 1,13,14 53 L.ed 371,390 29 Sup.Court Rep.148). "

Dr. Frey in Volume 131, at Page 14,583, in answer to Mr. Frawley, said:-

"Q MR. FRAWLEY: You have said that there are unnecessary service stations in the Industry and I take it that Mr. Halverson has some, like the rest of them, that is a fair assumption is it not?

"A Yes, probably there are some stations that could be dispensed with.

"Q Yes. Then does it not necessarily follow that Mr. Halverson was asking for a rate of return on those unnecessary service stations, that follows?

"A Yes, he is asking for a rate of return on his total investment in which are included some mistakes.

"Q Yes, so then I put it to you that the 16½ cents which Mr. Halverson says is the fair price, does contain in some part, does contain some part to be allocated and treated as a return to his company on his unnecessary service stations, that all follows, does it not?

"A It follows that the rate of return is on the total investment in which there are some unnecessary stations.

"Q THE CHAIRMAN: Would it not be most unjust, that is it might, and at any rate I would like your views as to whether or not it would not be unjust to say there should be no return on such stations for the reason that if the investment was a prudent one when made, not one made with a view of throwing money away, - but because experience has shown that it in fact was not a wise one, surely it should not mean that he should not have any return upon it, otherwise you have to have perfect judgment all the time or you get no return on your capital; what might be perfect judgment today may, - because of a change in the condition in a city or town, -

" be poor judgment tomorrow?

"A I can answer that very definitely, that all of us in business make mistakes. We do not make those mistakes deliberately. We use our best judgment at the time and there are many of our mistakes which are not a result of our own actions. Many of those mistakes are due to circumstances over which we have no control and I think that Mr. Frawley's position assumes a degree of perfection that is not evident in the experiences of business judgment.

p.14,586 I do not think that these oil companies attempted to spend money without rhyme or reason. I think that they used their best judgment at the time they constructed their property. They have harvested some mistakes."

Generally, Mr. Chairman, in view of the state of flux that the B.A. was in during the years 1938 and 1939, occasioned, in the first place, through the building of its new refinery and, in the second place, through its change-over to its new distribution system, it has been difficult to prepare a statement showing the capital on which it might be entitled to a return during this period. I believe the Commission Accountant will agree with me that to try and arrive at any such figure is somewhat of a hopeless task.

I have had Mr. Bronsdon prepare a statement of the assets located in the Province as at the 31st day of December, 1938, based on the original cost of assets serving useful purpose at that

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date less estimated amount to cover visual depreciation.

That statement may or may not help but I will be glad to submit it to Commission accountant if he wishes it. In effect it shows the total capital employed in the Province of Alberta in respect of sales in Alberta of $3,959,681.73. On this capital and taking the net profit referred to in the Exhibits of $326,844.57, it shows a percentage of earnings to capital employed of 8.25%.

THE CHAIRMAN: What is that last figure you say, Mr. Harvie? You say you received on capital employed.....

MR.HARVIE: On capital employed, arrived at on the basis mentioned, the capital employed would be $3,959,681.73.

THE CHAIRMAN: And your rate of return was what?

MR.HARVIE: 8.25%. That is before making adjustments on the return figure of $326,844.57.

MR. FRAWLEY: Is that capital employed in marketing or marketing and refining?

MR.HARVIE: That is all the capital employed, all items.

MR. FRAWLEY: Is the Coutts plant in there?

MR. HARVIE: I will give that statement to Mr. Cottle during the noon hour, if that is agreeable.

THE CHAIRMAN: Then we will not start a new subject. We will adjourn.

(At this stage the Hearing was adjourned until 2 P.M.)

MR. HARVIE: Before the noon adjournment, Mr. Chairman, I had just dealt with the summary of the evidence on Capital and now I turn to the summary of the evidence on the rate of return and that, along with regulations, are my only two remaining subjects other than my final remarks and I think those are, from the standpoint of the industry as a whole, the most important subject; the basis on which the capital employed is arrived at, what is a fair rate of return and then the all important subject is Government control, regulation and interference and so on.

On the rate of return Dr. Brown deals with rates of return on Imperial Oil and British American plants for years 1938 and 1939 and suggests the following as the fair rate of return:

Plant investment	15 %
Inventories	6 %
Accounts Receivable	7 %
Or an overall average	13.1 %

I think Mr. Cottle commented on that particular figure of 13.1% when Mr. Nolan used it and said that it was approximately, it needed some adjustment.

MR. FRAWLEY: 11½.

MR. HARVIE: Yes, 11½% I think.

Dr. Brown further states 15¢ per gallon reduction on realization equals 1% on return, that 3.5¢ barrel increase in crude cost equals 1% in return, 5½% pipeline reduction increases return from 12.8% to 14%. (P.14,236).

MR. FRAWLEY: And I think at this stage I should say that is another thing which was a little obscured in Dr. Brown's evidence, was what proportion of his 8¢ estimate that we have in the evidence, and he tells us that that was his 10,000 barrel a day plant. I am right am I not, Mr. Cottle, when Dr. Brown was giving us the rate of the drop in return and the corresponding reflection in the price, he was using as his basis a 10,000 barrel plant.

MR. COTTLE: Yes, that is what he said in a subsequent letter.

MR. HARVIE: I think the only point I am trying to make of it is that the basis of the individual types of investment of capital, that of plant investment and matters of that kind, a fair return he suggested was 15%; on that part of the capital employed in the inventories and on accounts receivable 7%, whatever their weighted average might be.

MR. FRAWLEY: I need not point out, Mr. Chairman, you will remember you were interested at the time that Dr. Brown was giving that evidence, in case you should want to know what any rate of return was, any amount which you might seek to reduce the rate of return, what reflection it would have and it is just that case, so that the Commission will not be wrong but you certainly must know what kind of operation he was talking about. We thought he was talking about the Imperial's 1940 operations and we found that it was quite different.

MR. HARVIE: I think that is cleared up in the subsequent evidence which he gave.

MAJOR LIPSETT: Did he give you any rate of return on land, or is that included under "plant"?

MR. HARVIE: I imagine that is included under plant although I cannot answer it. It is certainly not included under either inventory or accounts receivable.

MAJOR LIPSETT: No. It is hardly right to think he would allow 15% on a brick and stone building or something like that, if that is what he allows on the plant.

MR. HARVIE: I think it clarifies itself, at least to a considerable extent, in the further comment he makes.

MAJOR LIPSETT: I see.

MR. HARVIE: And if not I would be glad to come back to that point.

MR. FRAWLEY: Everything on accounts receivable.

MR. HARVIE: That is what I gathered from what he stated.

He continues.

P. 14,233 "It is my position that unless a company can see the probability of earning 13% on its invested capital, or more, they will not be justified, and they will not make further investments to improve their operations."

P. 14,253 "Most of those factors have been discussed and I believe it is perhaps not necessary to do any more than summarize and say, in my opinion, a return on capital of at least 13% should be

"indicated in order to insure the attraction of capital to the enterprise."

Then Mr. Frawley questioned him.

Q. Now I would like to have your views either in response to that one general question, I would like you to state your views on the propriety or otherwise of each and every one of these rates of return, what you have to say about them?

A. Well in estimating the proper rate of return to an oil company, refining company, which takes all the risks, the business risks involved, I have assumed,-and which I believe to be a figure which is substantially sound,-that a 15% return on the monies invested in plants should be allowed "

That answers in part your question.

MAJOR LIPSETT: Yes, except I can quite see that a plant might go out of existence quite quickly while a house might remain for a long time.

MR. HARVIE: He then continues.

"This is not an average figure that might exist over a period of 25 years but it is a figure which should not be regarded as excessive due to the risks and the vicissitudes of ordinary business ventures; the money which is invested in inventories about 6% and on the money which is tied-up in accounts receivable 7%. If we take those

"figures we find that the average rate of return on the total invested capital figures out to be about 13.1%."

Which Mr. Cottle has adjusted to roughly 11½%.

Again at the foot of this page and continuing on to the next page (P.14,210) he deals with this rate of return in some detail, stating -

DR. BROWN - Vol. 127 - P.14.210

"Therefore, any return on invested capital in the neighbourhood of 13% certainly should not be regarded as excessive because that might indicate simply a reasonably good year which is required to compensate for the lean years which have preceeded it or have followed, or will follow".

He continues:

P.14,210

"My estimated return on the invested capital at the Imperial plant based on their estimated costs and the estimated capital investment supplied by them, would be 15.6%; assuming that prices of crude and products to remain as they were in the Exhibits "308".

There is a reference then as to whether that is a 5,500 barrel plant or a 4,750 and his answer is that it is 5500 and he continues:

P.14,211

"Well that return of 15.6% is about 2½% over this 13.1%. I would not be at all concerned about that figure because it is for the first year after the new plant is in and they are entitled to a little

"quick return on that new investment."

MAJOR LIPSETT: Mr. Harvie, do you say that that evidence should stand regardless of the fact that his figure was nearly 2% more than the average of the three figures which he gave.

MR. HARVIE: I think the 13%, in order to attract capital, I think it should.

MAJOR LIPSETT: If you take this figure which Mr. Cottle points out, it would come down to about 11%.

MR. HARVIE: That is true, Mr. Commissioner, but on the other hand the matter of the accounts receivable and inventories vary greatly both over varying years and also in each year and its capital there and so on and I still think that you cannot take anything but that he has given consideration to all factors and come to the conclusion, regardless of whether it is liable to go one way or the other, that 13% is necessary to attract capital.

MAJOR LIPSETT: I suppose you can put it that the 2% margin in error that he gave in discussing the 15%, would at all events bring him to 15%.

MR. HARVIE: It would.

THE CHAIRMAN: Mr. Cottle, do you find that his 15.6%, is that correct.

MR. FRAWLEY: Well we have all this checked. Now I am not sure that that 15.6% is correct.

MR. HARVIE: That is the 1938 estimate.

THE CHAIRMAN: You found that his 13.1 is an error but is his 15.6%.

MR. HARVIE: We have all these things corrected some place and I believe the 15.6 is about right.

MR. COTTLE: Yes, I think the 15.6% is about right. I would like to look that up though to make sure.

MR. FRAWLEY: We have all these some place. Many of his percentages were just rough slide rule ones.

MR. HARVIE: And that may be some evidence that when he found it came around 13%, that his general knowledge was such that that looked fair and he just left it.

MAJOR LIPSETT: Then his 15.6 is what he estimated might be earned in 1940.

MR. HARVIE: Exactly, using the same figures as the previous statement. Of course those figures have been changed very considerably.

Mr. Bronsdon summarizes his views on the rate of return by stating:

<u>H. H. BRONSDON</u> - <u>Ex. 475</u> - <u>P.21</u>

> "Having in mind the foregoing 'and the foregoing are the various difficulties and risks in the trade encountered,
>
> "Having in mind the foregoing, it is submitted that the risks involved justify a high rate of return as compared with industry as a whole, and it is considered that a return of 15% on capital employed in the oil industry is a minimum and reasonable."

Mr. Gaby analysis the rates of return which have been given in the evidence in regard to this company's operations: (Vol.136, Commencing P.15,240)

P. 15,241 "The results of the year 1938 should therefore, in any consideration of the economics of the Industry, be adjusted to reflect its abnormality as against an average year." He states

P.15,241 "We have submitted the volume of business and the marketing costs for a period of ten years commencing with 1928 and ending with 1937 inclusive, which show that the maximum marketing cost per gallon for the year 1932 was 6.78¢ per gallon; 5.36¢ per gallon in 1928 with a cost of 4.41¢ per gallon in 1937, and an average cost for the ten years of 5.58¢ per gallon." And again

P.15,242 "The variables are many and the future is hard to predict but it is evident that the fluctuation in marketing costs bears within limits some relation to volume of business in any given company's operations, and it therefore is reasonable to assume that an average marketing cost per gallon over any period of years will bear some relation to a normal year in such period." And again

P.15,242 "Now I say if for comparison with 1938 only half cent of the difference between average for eleven years of 1.22¢ and the cost for the year 1938, which, added to 1938 marketing cost, is taken as the marketing cost

P.15,242 "applying to a normal year, the income for
P.15,243 the year 1938 with marketing costs so adjusted, should be reduced by approximately $125,000.00 and the percentage of the return on capital employed as calculated and used, would be reduced from 9.13% as given in Mr. Bronsdon's evidence, to 4.94% after adjustments of costs of crude oil and selling prices to those in effect as of May 1st, 1939."

P.15,244 "The example just referred to as a basis of adjusting an Industry's performance to that of a normal year is for the purpose of calling attention to the necessity of adjustment in the statements submitted for the year 1938 when considering the reasonableness of the percentage of return on the capital employed in the company's operations."

Commencing on P.15,246, MR. Gaby deals with the benefits 'and I think this again is quite an important factor, dealing with Alberta alone as we must in this connection.

MR. Gaby deals with the benefits the Alberta consumer receives through the inter-relation of Alberta business with that of surrounding territories.

P.15,246 "That, Mr. Chairman, is all I have to say at this time in connection with the factors necessary to keep in mind when dealing with return of investment of the company, having in mind that the year

P.15,246 "1938 in our view is not what we would consider a normal year over the period, over the last ten years."

P.15,246 "In an endeavor to deal with conditions in the Province of Alberta it was necessary to make certain assumptions, based on judgment through experience and equity as to the share of general costs and overhead that is reasonably chargeable to such operations in Alberta. These charges would therefore, on the basis of distribution, be more favorable to Alberta estimate of cost than would an independent estimate of the cost of doing business in Alberta only."

P.15,247 "In the case of our Refinery in Calgary, thirty percent of the output is marketed outside the limits of Alberta, the elimination of which would increase the costs of Refined Products about one-half cent per gallon, or an increased operating cost of Alberta throughput only of ten cents per barrel."

P.15,247 "Further, the interrelation of our administration and operating staffs in Western Canada tend to give an advantage to Alberta estimates with a proportionate share only of total costs charged."

P.15,247 "Alberta further obtains the benefit in its Petroleum costs by the method of arriving at the Crude price for the present wide distribution, which if confined to Alberta uses only, would have been on a competitive basis with

P.15,247 "Montana Crudes - $1.67 per barrel instead of the $1.20 per barrel at present paid, and used in the estimates of 1938.

This was illustrated

P.15,248 by Mr. LeSueur, which, if confined to Alberta only, and I believe the figure given by him was $1.67 per barrel instead of the $1.20 at present paid and used in the estimates of 1938." He continues

P.15,248 "Strictly the preparation of an estimate on doing business in Alberta only would have been materially higher in costs. I do not propose to go into the details of such an estimate but wish to draw attention to these evident facts for the Commission's consideration in arriving at its judgment as to the economics and fairness of the price structure of the Industry to Alberta consumers."

And then I proceed to the next item of "regulation"----

MAJOR LIPSETT: Now Mr. Harvie, before you leave that, I asked Mr. Nolan when he was speaking on this further question, assuming just for a moment that your prices at the refinery are correct and assuming what you say about the rate of return necessary to attract capital into the Province and to justify your expenditure in the plant you have put up, is there any help that can be given by the two companies in view of the

costs that the Texas Company is getting by with in their marketing, that your two companies could do something to reduce the jobber margin which is now around 7¢, not necessarily at all to the 3½¢, but to something between those two figures, with a view of possibly assisting in the elimination of surplus service stations and with a view possibly of doing something more for the consumer, without hurting the company but getting somewhere nearer to the spread that it pays the Texas Company to work on, although they actually lose something on the marketing.

MR. HARVIE: I will put it this way, in the summary presented this morning of the evidence, Mr. Commissioner, it was pointed out that so far as the operations of the British American Oil Company is concerned that if you eliminated all their capital in retail facilities, that is everything in the retail facilities and I want to emphasize that, that if we, if that were all eliminated, it would only make a difference of 2/10 of 1 cent a gallon on their entire gallonage so the whole Texas situation is thrown overboard on our basis, all that end of the business in which the Texas Company is in, in Alberta.

MAJOR LIPSETT: That is where you do the marketing yourself.

MR. HARVIE: That is over our entire gallonage.

MAJOR LIPSETT: Yes, but where you are the marketers yourselves, but does that cover the cost that I was referring to.

MR. HARVIE: I do not know that I have answered your question in full but I do think it does in part and I just go on as I remember the evidence, that Texas have a spread of around 3½¢----

MAJOR LIPSETT: Something like that.

MR. COTTLE: The spread differs for different places, some places it is 3.1.

MAJOR LIPSETT: 3½ or 4¢.

MR. COTTLE: Well 4½ in Edmonton.

MR. HARVIE: We might take a line between those two 3.1, and 4.1, 3½ cents. Now the Texas Company have not got by on that. The evidence is they lost money on that.

MAJOR LIPSETT: They lost a little but they almost broke even last year as I remember the figures. There was some loss.

MR. HARVIE: I think there was maybe quite a considerable loss.

MR. COTTLE: My evidence, Mr. Commissioner, was that the Texas Company's marketing expenses divided into the gallonage of white goods was something like 7 cents a gallon, compared with Imperial's 4.6; that indicates the degree of profitableness.

MR. FRAWLEY: They lost 4 cents on every gallon. They had a spread of 3½ cents and they had a cost of 7 cents.

MR. COTTLE: No, I do not mean by that that they lose 4 cents a gallon but I do mean by that that their expense of doing business is much more per gallon

than the Imperial, so that even with Imperial's spread they would be expecting to lose money.

MAJOR LIPSETT: That is where they do their own direct marketing.

MR. COTTLE: No, that is taking all the Texas Companies, oh, I see what you mean, the Imperial doing their own marketing.

MAJOR LIPSETT: Yes. What I was having in mind for discussion and help is the fact that on the figures which we got, that this Texaco Company of Canada get its products laid down here in Alberta at 12.9.

MR. COTTLE: They have 3.1 cent spread.

MAJOR LIPSETT: Yes. Now if that is, it may be quite justified, but if that figure is practically correct, why could not the Imperial and the British American arrange in some way with their jobbers to get less spread than the 7 cents that apparently they have been giving them.

MR. HARVIE: I think the evidence is, Mr. Commissioner, that as a whole, the jobbers are carrying on quite an efficient operation. I do not think there has been any undue criticism of excessive expenditures and so on, and my recollection of the figures, speaking generally is, that they show no absorbitant profits; in fact the reverse.

MAJOR LIPSETT: The Texaco Company have jobbers and they are allowing them 3½ cent margins.

MR. HARVIE: Now you are referring only to gasoline and we are dealing with gasoline on these figures; that situation does not apply to a great portion of their

business which is lubricating oils and other things and gasolines and fuels that they buy in Alberta so I do not think they are comparable figures. While I would hesitate to try and analyse them and set out any figure which would be comparable, I think maybe Mr. Cottle could be of great assistance on that.

MAJOR LIPSETT: I am not putting it to you with any view at all, Mr. Harvie, but it is a thought which I have had that should be investigated.

MR. HARVIE: I would like to be of some assistance, Mr. Commissioner. I have thought it over quite a great deal since the matter first came up and I think maybe the only thing I can say is that I doubt if those figures are comparable in any sense of the word. As the 3½ cent figure which we discussed is only applicable to certain products.

MAJOR LIPSETT: As I think I see the picture, one of the things that forced the Imperial Oil Company to give that spread to the jobber was the risk in the business of competition from two or three of those jobbers maybe starting in to refine.

MR. HARVIE: Yes.

MAJOR LIPSETT: And I would think that it might be urged on the other hand, now that your company has started refining and Gas and Oil Products have started refining, that so far as the 7 cents is influenced by the threat of refining competition, that that might be more or less out of the picture.

MR. HARVIE: There are all the other

refineries.In our case there is the Great West, it is our biggest jobber and the one we have to watch the closest from that standpoint. I would like to be of some more help if I could but I do not see how that I can.

MR. COTTLE: Mr. Commissioner, on the Texas Company's figures in the year 1937 they lost $17000. We did not have the 1938 figures because this examination of the Texas Company was made early this year, therefore, we had to take the complete year, 1937, and they lost $17000.

MAJOR LIPSETT: Now Mr. Cottle, if it would not be interrupting you, what does that $17000 represent per gallon.

MR. COTTLE: That would require a calculation.

MAJOR LIPSETT: Just roughly.

MR. COTTLE: Even on the assumption that it did not represent anything per gallon, just that they broke even, there have been many price drops since 1937; the first price drop was in December 1927, a cent; and a cent and a half on November 22nd, and another cent on January 5th, 1938 and a further drop last summer and the drop we heard of a few weeks ago, so that the Texas Company's spread has been very greatly narrowed since 1937 and their loss position would be increased from 17,000 to, I would think, something around 60 or 70 thousand dollars.

MAJOR LIPSETT: Unless they have been able to get some corresponding economies that we do not know about.

MR. COTTLE: Yes.

MAJOR LIPSETT: In reply Mr. Cottle, it may be said that it is still worth their while carrying on business even after those reductions.

MR. COTTLE: Yes, quite, sir, but the point is that the 3.1 cent does not cover the expenses of their operation and it does not provide for a profit at all so it cannot be inferred that they can get along on their marketing operation on 3.1 cent. It may be there is money made elsewhere, in which case the 3.1 is quite artificial and if it is artificial the 3.1 in itself does not mean anything.

(Page 16,403 follows)

MR. COMMISSIONER LIPSETT: Then it works out in this way that at present the spread is even greater than between 3.1 and 7 cents, if they have a less spread and Imperial and B. A. jobbers still get 7%?

MR. COTTLE: No, the 3.1 is the spread to-day. That is not the spread on which they made this loss of $17,000.00. It might have been 1 or 2 cents more than that at that time.

MR. COMMISSIONER LIPSETT: These figures then really do not help one very much?

MR. COTTLE: The 3.1 cent spread?

MR. COMMISSIONER LIPSETT: 3.1 is the accurate spread at the present moment.

MR. COTTLE: In Calgary.

MR. COMMISSIONER LIPSETT: And the $17,000.00 loss in 1937 is not referable to the 3.1 spread at all?

MR. COTTLE: Not at all. I would estimate a comparable figure would be something like $60,000.00 or $70,000.00, in reference to the 3.1, and, perhaps, even more than that.

MR. HARVIE:

R E G U L A T I O N S

Dealing with Regulations, Mr. Chairman, I first summarize the evidence of Dr. Frey, who states: (V. 139, P. 14371)

"This brings me to my first generalization concerning the relations between Government and business, namely that in an emergency the Government should be in a position to exercise control on the upward flight of prices. Putting this situation in economic terms - the war situation - I think he was speaking of 1914 - brought on a demand so far

in excess of normal capacity that the so-called law of supply and demand broke down and the Government had to establish an artificial top. I think that this is an important part in the life of any Government where supply and demand get badly out of relationship with each other. In such a situation the sky is the limit as far as price is concerned."

And later: (V. 129, P. 14384)

"Some effort has been made in the United States in the direction of standardization. There are several States that have such laws. They do not solve the problem because the range is considerable."

And questioned by Mr. Frawley:

(V. 129, P. 14385)

"Q. MR. FRAWLEY: But it could not fail to advantage the consumer?

A. Yes. Much would depend on how the public understood that standard."

(V. 129, P. 14387)

"A. It is integrity and it is hard to replace integrity with standards".

Q. Yes. Well, would you say that the public gets any measure of protection from minimum standardization?

A. Yes, they do.

Q. You see, Doctor, that you say that there is that irresponsible man that the public, perhaps, should be protected against. What is your view about that?

A. I think there is a degree of protection to the consumer if the oil inspection activities of the Government

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that adopts them is rigorous and the standards are no better than the oil inspection service of the political division which has passed such measures. In certain States such measures are followed up very closely and periodical examinations are made of the quality of products being sold. It costs quite a little bit to do that, and that, of course, is passed on to the consumer. I do not have very many examples of just what those taxes amount to, but they vary from State to State. In some instances approximately about one-tenth of a cent a gallon, which has to be absorbed by the consumer. But this is an assurance, this is what he is paying to assure him that the State is doing a job at determining that the minimum standards established are being adhered to, and the company that violates those standards is brought to justice. I should say that standards are no better than the administration of the law".

Then speaking of the Code he says:

(V. 129, P. 14412)

"I say that so far as enforcing the law was concerned we found very soon, within a matter of six or seven months, that we could not rely on the slow action of the Courts to get results; that if we wanted to get anywhere at all and we felt that the intent of the Code was to get somewhere in stabilization, that we would have to get out of the legal aspect of the thing and get voluntary co-operation and we made a desperate effort to get the Industry to come in and join in a common objective to bring the whole thing back to a

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stabilized condition and I must admit that we accomplished much more by industrial co-operation than we ever could have dreamed of by punitive methods in the Courts".

Then questioned by Major Lipsett at V. 129, P. 14416:

"Q. MAJOR LIPSETT: Dr. Frey, if I may interrupt you for a moment. I gather that your general view is that there should be Government interference if the price either goes so high that the public are being badly treated or that it has got beyond control or if the price goes so law that the Industry is going to be ruined?

A. Yes."

He then proceeds:

(V. 131, P. 14638)

"Now the next step is a theory. In theory it would be desirable for all purchasers at a common place of business to keep the same price. But how to obtain it in actuality might be quite another matter. I should say that the fixing of a margin would be highly disadvantageous to the honest man and a fine weapon for the dishonest. That if you established, if a margin were to be established I think the moral responsibility would then fall on the State to see that the honest man was protected against the dishonest and I recognize as a matter of fact that that is a very difficult operation.

THE CHAIRMAN: Like standardization it would be just as good as the police work was effective?

A. Yes Sir.

Q. THE CHAIRMAN: Is not the way you would stop that would be to try and find a case every now and again where the law was infringed and prosecute, prices being well known?

A. But all the time the honest man would be penalized by the dishonest."

Later, speaking of the Nova Scotia legislation, Dr. Frey says: (V. 131, P. 14650)

"I would say as an emergency it might be possible to use some half-way legislation of that type; certainly the NRA type of legislation did not go all the way."

(V. 131, P. 14654 and P. 14655)

"In Washington there are many of us that are labelled 'experts'. We have no authority at all. I have not a particle of authority in marketing in the United States. I cannot probibit any one thing. It is absolutely impossible for me to prohibit anything. I cannot demand that anyone show me a record even. But I am, nevertheless, recognized as an expert on marketing by my Government and I am generally so recognized by the industry, and I prefer that the industry try to learn what it is doing and the only thing I regret is that present sanctions under the anti-trust laws prohibit the industry working with the Government in overcoming some of the difficulties that we know about. I think that laws should be liberalized to the point where there can be a reasonable relationship between Government and business in which business is not required to take the position of defendant all of the time".

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Then he was questioned by the Chairman: (V. 131, P. 14655)

"Q. CHAIRMAN: Dr. Frey, to be concrete, Government intervention, as I understand your views, - Dr. Frey, Government intervention should, under no circumstances, be made unless the conditions are such as to patently indicate the need for Government intervention?

A. Yes.

Q. That until it appeared that Government intervention is desirable it must be treated as an emergency measure or of temporary duration or it must be considered serious, of so serious a character as to call for the creation of a Public Utility which is to be put under the dominance of some Public Utility Board?

A. Yes.

Q. Now you have been invited to come to Alberta and to make a study of the situation as we have it here; you have heard a good deal of evidence from Mr. Cottle as to the accounting standpoint; you have heard a good deal of evidence bearing on other branches; is the situation in Alberta such in your opinion that it would call for Government intervention of any kind?

A. In the marketing I do not see any indication that there is any necessity for Government intervention".

And continuing, (V. 131, P. 14661)

"I do not see anything in the present situation that is so completely out of line as to necessitate

Government action as drastic as utility regulation."

Then questioned by the Chairman,

(V. 133, P. 14841)

"Q. CHAIRMAN: Dr. Frey, you have expressed views that would lead me to think that you were against monopolies?

A. Yes Sir I am against monopolies.

(V. 133, P. 14843)

Q. CHAIRMAN: That is direct Government operation.

A. Direct Government operation. It has been a failure.

(P. 14,864)

A. Yes. Each time legislation is effected and it is not completely thought through it does not cure and, consequently, we have a sore, but it may be on the arm instead of on the leg. We are not complete in our analysis of the situation. We have made attacks on industry at times that could result in absolutely nothing.

(V. 133, P. 14,845)

Q. CHAIRMAN: And so I put it to you that there are those who are prepared to support the view that monopolistic control is not a bad thing, providing that it is supervised by competent Governmental agency. You think there is nothing to that?

A. I would not say there is nothing to it....I should say for instance applying it in a State..... in my country I would consider that the establishment of a monopoly by a State would be practically impossible. That there could be such a thing as a National monopoly and not a State monopoly.

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(V. 133, P. 14,865)

"but I have been wondering is there not some way of some liaison officer, if you will, some intervening body"

(V. 133, P. 14,865)

"A. Well, I have expressed an idea on the desirability of co-operation between Government and industry. I think that many things can be settled across a table that cannot be settled in a criminal court.

Q. CHAIRMAN: Yes?

(V. 133, P. 14865 and P. 14866)

A. And I think that the idea is perfectly sound.

Q. Of an intervening body now?

A. Of an intervening body.

Q. That is what I would like you to direct your mind to?

A. Yes, but again, I have to go back and say that it is just as good as.....

Q. The personnel of the Body?

A. The personnel of the body.

Q. Yes, I would subscribe to that. But can it not be conceived both by the public and by the industry that there are honest and intelligent men who would serve a good purpose to both?

A. I do not see any reason why we should condemn humanity to complete stupidity.

Q. Is there not some purpose to be served there, if one understands the industry and its operations, and understands its needs and understands its requirements for reserves and its need for protection to preserve its entity as a corporation:

its need for reasonable profits and all those things, which does not jump in the dark and say that a company has made a lot of money and we will take it all away, and it does not matter whether it goes broke next year or not. On the other hand, it sees to it that where these occasions arose which you have described as emergency occasions that the public is not rooked by those naturally who are serving themselves?

A. I think very definitely there is a place in Government for that type of industrial cushioning.

Q. That, perhaps, is a very happy expression to describe what I am putting to you for consideration. Well, we will rise."

Then later, (V. 133, P. 14848 and 14849)

Q. CHAIRMAN: Now, there is another viewpoint, of course, which should receive consideration and that is that it should not be a monopoly, that there should be competition, as now exists you say, but that there should be a domination of it by Governmental agencies, a Governmental agency such as, for example, the powers exercised by the Dominion Railway Board in Canada over the competing railways of this country; have you any thoughts about that?

A. My position in the Government being an administrative one, I always fall back on the problem of the administrative difficulties. Maybe I am lazy but at any rate I never look at any proposal of

that sort without considering what my part of the job is going to be and I can see that, just taking it out of Alberta again and going down home, I have the problem of trying to adjust all of the difficulties in commercial organization, financial responsibility, sources of supply, variations in customer preferences and many other things of that sort, which I would have to take into account if I were given the responsibility of administering an industry. I shudder at the consequences because it would involve a decision in which I would have to make up my mind very definitely, very clearly, as to whom I was going to hurt and why I was going to hurt them. It would involve decisions as to what the effect would be for the public in the operations of these various kinds and in the process I know I would have to destroy some and build up others. Now I think that is a problem which one is faced with if they attempt control.

You start off to control only a little bit but since each element has a bearing on something else, before you know it you are pretty well along the line of controlling everything, and then the administrative problem becomes increasingly difficult and you do not have business management at all. You have Government management.

My own feeling is that business men, as a rule, and now I am not talking about Canadians, please, I am talking about Americans, that business men as a rule are more elastic in thinking and are generally more capable of making decisions

than Government men. The business man is constantly in the position of taking risks and he makes risks decisions knowing very well that the decision may, if it proves false, drive him out of business but he takes the chance."

On question from the Chairman,

(V. 137, P. 15360-61-62)

"Q. CHAIRMAN: Doctor I would like to know if you would care to develop the point as to whether or not it is in your view desirable to have any type of intervening body extending between the Government and the industry; and if so what type of body.

A. Well in the first instance on conservation I have definitely committed myself. That is I do believe that it is desirable to have a conservation agency."

THE CHAIRMAN: This is still Dr. Frey?

MR. HARVIE: This is Dr. Frey.

"In refining I have seen less occasion here than would appear to have been necessary at one time or another in the United States. In marketing we have interfered more in the United States than you have here, that is we have interfered at one time or another. Just now there is very little legislation that directly applies to marketing in the United States."

MR. FRAWLEY: What page is that?

MR. HARVIE: Page 15360-1-2 in Volume 137.

THE CHAIRMAN: Volume 137, Page 15 thousand and what?

MR. HARVIE: 15,360-61-62.

THE CHAIRMAN: Would you mind reading that again, please?

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MR. HARVIE:

"A. Well in the first instance on conservation I have definitely committed myself. That is I do believe that it is desirable to have a conservation agency. In refining I have seen less occasion here than would appear to have been necessary at one time or another in the United States. In marketing we have interfered more in the United States than you have here, that is we have interfered at one time or another. Just now there is very little legislation that directly applies to marketing in the United States. Now I have said that I think it is desirable for the Government to be acquainted with what is happening in the industry and strange as it may seem for a Government man to be suspicious of Government, nevertheless I can sympathize with some of the statements that have been made here - they are equally applicable in the United States - that Government is not above doing some things that make it tougher for all parties at interest. I have had enough painful experience on that particular thing to understand the force of it. I think partly a question of whether there is an agency of the Government that is more or less of a contact agency depends upon what that agency is intended to do. Whether it is an agency set up to create regulations; to bind the industry to a certain procedure; whether it is mandatory or not; whether it is advisory and co-operative. I think also it is an important consideration as to the personnel of such an agency. Is the

personnel qualified sufficiently to understand and do the right thing by the State and by the industry and by the people. That is a difficult thing to determine. There is another thing, and that is if abuses exist in Illinois in marketing let us say, is it not entirely possible that they exist in Iowa and Indiana or perhaps all over the United States. If such is the case then would it not be better instead of having an Illinois body and an Iowa body and an Indiana body, might it not be better to have a Federal body. Well that is one place in which I display my bias because I happen to be a Federal man and naturally I think that we do a better job than the States and I also think we see the thing from a broader point of view, so that it seems to me that whether one does or does not have an agency depends largely upon what one is trying to accomplish in the way of relationship between State and the industry and the people. And without having a pretty good idea of the objectives I think it is difficult to state positively that it should be one thing rather than another. I do believe definitely that if an industry is not ethical an attempt should be made to make it ethical and the modus operandi depends on the circumstances. It seems to me that there is very little in marketing as far as ethics are concerned cannot be resolved into a relatively simple statement. It seems to me that marketers should sell what they purport to sell."

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At the foot of P. 15362 he continues:

"If there is no subterfuge in the matter of quality and price and classes of customers it seems to me that most of the difficulties, most of the evil things in marketing are overcome."

Then on a question from the Chairman, (V. 137, P. 15363)

"Q. CHAIRMAN: And in the event of it being found the so-called evils do exist do you think it quite reasonable that there should be a Code of fair competition, so long as it does not make for rigidity I take it, from what you have previously said.

A. Yes I would consider anything that leads to rigidity in prices undesirable. I think prices must remain flexible. Prices must be competitive. But certain of the practices as to how a price is named and who receives the price is over the table dealing instead of under the table dealing. It seems to me to constitute the essence of ethics in the matter. Now in every market there probably are people who deal under the table but a very large proportion of the industry deals over the table. The next thing is that if the industry does not feel that the abuses are so considerable"

Now may I repeat that:

"The next thing is that if the industry does not feel that the abuses are so considerable to justify a Code I do not see why the State should bother giving them one. I think that industry should want a code. I think the better element does always.

The reason they are so suspicious of the Code is that they are afraid of the inactivity of policing of such a Code and the inequities which result from a competitor; the more ethical marketers doing one thing and the unethical doing something else without being brought to justice. I should say that the larger the area - and I do not want to make it appear here that I am saying Dominion versus Province or Province versus Dominion, I should like to keep out of that because that is your business here at home - but I should say the larger the area in which one deals in such matters the better because the chances are that if things are bad in Illinois they are also bad in Iowa."

(V. 137, P. 15367)

"Q. CHAIRMAN: Would it be a reasonable thing to take the position that another Province has, that all being fair now that increases in cost to the consumer could not be made without the approval of some such body. In short without cause being shown why they should be increased?

A. I have no objection to that in theory. It seems perfectly reasonable in theory.....
Now my own feeling is that there is not very much necessity for putting in a top stop."

Then later, (V. 137, P. 15369 and 15370)

"But the A. P. I. Code and the N. I. R. A. Code had some similarity. The principle which I have expressed that you sell what you purport, that you post your price for qualities and types of customers

and that you stick to it was fundamental in both. Neither one was intended to have any rigid effect on prices. Now quite a number of bad practices had developed and if you introduce to the general conditions which may be considered as ethical another consideration that there should be no subterfuge you practically cover the thing because most of the rules had to do with subterfuges and that is what made them so lengthy. And that is why you have so lengthy, for instance our Code has 33 rules and by the time we got through with interpreting the thing, we had a young book; as a matter of fact I think the book we got out, showing not only the rules but the interpretations, ran to more than 100 pages. Now that was due to the development of legalistic thinking on the part of the various people who were working under the Code."

Now, Dr. Brown on Regulations.

(V. 127, P. 14238)

Dr. Brown has just stated that in respect of at least the two Companies into whose affairs he had examined the picture was not an unreasonable one.

"Q. CHAIRMAN: And that there should be no outside interference with it?

A. That is right. It is a favorable situation in my opinion but it is one of those favorable situations which we must have in a period of years in order to keep the industry in a sound condition, to tide it over the lean years.

Q. Quite so, and you say that the only alternative which presents itself is the alternative whereby the profits

may be reduced on the assumption that the body reducing the profits is able to insure a proper profit; in other words, a public utility?"

A. I think that is summarizing my point of view very well."

(V. 127, P. 14239)

"Q. CHAIRMAN: As I understand the witness there are no circumstances in which he would advocate Governmental interference."

That is a comment while you were discussing it with Mr. Frawley.

Then Mr. LeSueur on the matter of Regulations. (V. 135, P. 15137)

"The appointment of a Board that was, you might say, constituted with co-operation faculties is perhaps all right if it will confine itself to those particular functions, co-operation and consultation. That, of course, is the difficulty. Then again the question is would you have a Board for each province with those faculties or would you have a central Board but with those faculties. My own idea is that you might get into a great deal of trouble if you have a great many Boards that you have to consult all over the Dominion."

(V. 135, P. 15139)

"Generally speaking you can accomplish more by getting reasonable people around a table, who know the facts and get down to essentials."

Then later, (V. 135, P. 15140)

"A. We usually would need no action, Mr. Frawley.

Q. That is true.

A. The parties would really agree between themselves and they would be in a much more permanent position."

THE CHAIRMAN: Does Mr. Frawley say that is true?

MR. HARVIE: He just left it at that. He said "We usually would need no action, Mr. Frawley," and Mr. Frawley said "That is true." That is page 15140.

MR. FRAWLEY: There must be something wrong some place.

MR. HARVIE: I am beginning to think so myself. Then on question by Major Lipsett (V. 135, P. 15141 and 15142)

"Q. MAJOR LIPSETT: In the exceptional case, if it arose, Mr. LeSueur, where the round-table conference did not settle anything has the Tariff Board any further authority or jurisdiction?

A. Oh, they have the right to investigate. They can hold a public hearing if they see fit.

Q. And then what happens after that?

A. Oh then, they go into the matter thoroughly and make their recommendations to the Minister of Finance and the Minister of Finance acts.

Q. Has he power to act then?

A. Well his powers are within the Legislation which he has but-----

Q. MR. CAMPBELL: Mr. LeSueur, they are purely recommendations?"

Then Mr. LeSueur says at (V. 136, P. 15187 and 15188)

"When the codes in the United States were in vogue or were being discussed for the purpose of stabilizing those conditions there and really stabilizing prices and getting rid of the chaotic conditions there, the example led to

consideration of similar measures in some of the Canadian Provinces. Nova Scotia I think was about the first. We approached that with them not in any hostile spirit, because we felt at the time there might he possibilities of real results from those regulations and they were not prejudicial, but our experience over the last two or three years, since they have been in, is that one regulation, that was the one which prevented the loaning of pumps, possibly did produce good results. It stopped the loaning of pumps, but at the same time we must consider this, that in Quebec and Ontario, just the ordinary pressure of economic considerations has practically stopped the loaning of pumps there; perhaps by natural force rather than by legislation.

Now as to the other regulations they have not produced the results anticipated. They are, I think, evaded with impunity today. They have not been satisfactory and perhaps somewhat damped, in being there they have been somewhat of a damper on competition and they have not produced the results anticipated."

Mr. LeSueur then reads into the record the statement regarding his Company's attitude respecting Codes and states on Pages 15190 and 15191, Vol.136:

"Our experience of regulations in Canada is not intensive but it leads us to feel that regulations should only be adopted in case some substantial evil exists which will not likely be corrected by natural forces within the industry itself. Regulations are harmful unless they are workable in practice and if adopted, should be enforced without discrimination and equally against all

parties in the industry. The result of lack of enforcement is that the entity in the industry which endeavours to strictly abide by the regulations is placed at a disadvantage and a canopy is held over the entity not observing the regulations, with the result that the free play of competitive forces is hindered. On the other hand, if rigidly enforced, they may well have the tendency of freezing initiative and encouraging inefficiency in business."

and later at P. 15192:

"As requested by you, Mr. Chairman, we have given careful consideration to your question as to any possible legislative measures to help the industry and, while we are in favour of co-operation between Government and industry, we feel that any measures which introduce rigidity and lack of flexibility in the industry or interfere with initiative and the natural play of competitive forces are harmful and to be avoided and that legislation is more likely to hamper than to aid these forces which, under existing conditions, are serving to produce the very results which that legislation would probably be intended to accomplish."

Mr. Gaby, dealing with the matter of Regulations, says: (Vol. 136, P. 15259 and 15260)

"Regulations applied to the industry is sure in the long run to be disastrous to the best economy in the Public Welfare, not only by increased costs of policing but the canopy it will provide for subversive practices and other reasons so effectively discussed before this commission.

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It has been difficult where regulations have been adopted, to find over a term the equitable and impartial enforcement of such regulations which may, in the first instance have been designed along ideal lines in the interest of the community. Abuses of privilege will sooner or later develop and a situation be created that would be more serious than if no regulations had been adopted in the first instance.

Regulation for protection of dishonest dealings and/or practices is generally recognized to be subversive to public morals. In attempting to protect the public interests, Governments can but generalize and such applied to business have not in the past produced sound results."

And later, (V. 136 P. 15260 and 15261)

"Governmental control of price structure that would restrict the freedom of competition in Industry would be detrimental to its economic operation and would restrict the exercise of sound judgment in the furthering of the development in the interests of its customers. It would further create hardships by necessitating the reduction in adjoining territories not subject to such control."

And again,(Vol. 136, P. 15262 and 15263)

"Enforcement of price fixing by agencies of Governments is almost impossible when it is not in the economic interest and fairly equitable to all parties.

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This is readily understood from the magnitude of the problem of policing.

Price fixing with Government control inevitably will paralyze initiative, invention, adventure and enterprize.

It must be made clear that our comments in respect to the regulating of petroleum business are restricted solely to general marketing operations and that we do not suggest that the Industry should not be subject to all such general regulations as might apply to any other Industry, such as compliance with all fire regulations, building and health regulations and town planning, or any other which are considered advantageous to the community as a whole. We are heartily in accord with this type of regulations.

Generally speaking, we feel that there can be little need in the Industry for regulations, their benefits do not outweigh the additional expense and other detrimental features and our experience is that regulations in effect cannot be and are not expeditiously, effectively and impartially enforced. Adoption of regulations usually results in the Companies that scrupulously comply with same, being seriously handicapped in competing with Companies that fail to voluntarily strictly comply with them and there always seems to be some of this type of operator in each community.

We, therefore, contend that the Industry is better off and the community better served, without regulations."

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Continuing:

"Natural economic forces are adequate to keep "business on a sound basis when honest competition "is evident and Government regulation is only "justified when economic forces fail through "unsound ethics.

" Governments inherently have not the "qualifications for control and regulation of "Industry when Government substitutes itself as "manager of the business."

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On being questioned by Mr. Frawley:

"Q Mr. Gaby, you think that there should be no Govern-
" ment regulation of any kind in this industry in
" Alberta. Is that a fair statement?"
"A That is a fair statement yes.
"Q If we find a variety of what would appear to almost
" anybody, to the average citizen, as unfair retail
" merchandising how are we going to stop that?
"A I should say that if you find in the industry unfair
" practices that cannot be remedied by fair competition,
" excessive practices, then I should say the Government
" probably should give some consideration to such
" conditions.

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"The difficulty as I see it, Mr. "Frawley, it would be ideal to have such a situation "if it was possible of policing. But we have got "the human element to deal with. We have the "merchandising element where one man is trying " to increase his Volume or otherwise and he certainly "may cut his prices to meet a situation."

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P.15272

And later:

"If I thought a situation could be adopted that would "meet the condition all right. But in theory these "regulations look ideal on the surface but in practice "they have not worked out satisfactorily and that is "the reason why I am making my statement today."

On a question by the Chairman:

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"Q That position seems a reasonable one and you say
" so far as rents are concerned it is a question of
" whether or not the rent is reasonable and as to
" whether one in that business could afford to pay
" any more".
"A Quite right."

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And also in answer to the Chairman:

"Q And do your observations equally apply to painting the buildings, providing electrical fixtures
" and doing paving and all that sort of thing?
"A If that is the prevailing custom amongst the
" dealers we can see no objection to that as we
" would have to do what others are doing. But
" answering that question generally I believe that
" if there was more freedom of action within the
" industry itself that many of those evils that have
" been referred to here no doubt could be taken care
" of by a code of ethics which could be adopted by
" industry through co-operation."

THE CHAIRMAN: Do you want to rest, Mr. Harvie?

MR. HARVIE: Maybe just five minutes would be appreciated.

(An adjournment of five minutes was here taken.)

THE CHAIRMAN: We seem to be continually delaying you, Mr. Harvie, have you much more?

MR. HARVIE: No, I have not, Mr. Chairman.

THE CHAIRMAN: I am just asking in order that we may govern the length of our sitting accordingly today.

MR. HARVIE: I do hope to be able to finish before adjournment.

THE CHAIRMAN: Very good. I am not hurrying you in the very least.

MR. HARVIE: As a matter of fact I have only three more pages of evidence and then I come to my own summary.

THE CHAIRMAN: Yes.

MR. HARVIE: We were dealing, Mr. Chairman, with Mr. Gaby's evidence and we are now dealing with the matter of the posted price and the Chairman asked the question:

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"Q CHAIRMAN: Is it not very common to have a
" posted price showing the price at which the
" dealer sells and the tax that the public has
" to pay?"
"A Yes.
"Q Then he is selling at a price and it is a
" known price and if he wants to make it less,
" all right?"
"A Yes. That does prevail in many provinces and
" as long as that posted price is not made a
" compulsory one in which the Government under-
" takes the responsibility of policing, to see
" that that price is maintained, I think it is a
" reasonable protection to protect the public.

"Q The public after all is entitled to some
" measure of protection?
"A Yes."

Then another question by the Chairman:

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"Q Do you believe in a measure of co-operation
" between the industry and the Government in
" this day and generation, you do or do you not?"
"A Fundamentally in a democracy, yes I do."
"Q And when I say that I mean co-operation as
" distinguished from intervention, which is wholly
" mandatory in character?"
"A I took that for granted, sir."

Then the Chairman, speaking of ethics within the industry comments:

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"Q Well they have not made a very good job of it
" so far?
"A Well we have not. I do not believe without
" proper freedom of action, it is possible for
" the industry to do so. When any co-operative
" measure is attempted we are always met with the
" suggestion that we may be violating the law, if
" we enter into conference to protect our ethics
" so far as the industry is concerned."

He continues:

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P.15313

" I believe any co-operative action
"between Governments and industry insofar as it is
"for the benefit and a non-restriction on the freedom
"of competition, I believe such a body, if the
"personnel could be of a character such as you have

"described, might be a very great value to the
"industry in dealing with many problems, providing
"it only took action in case there was maladminis-
"tration or malpractices which were not in the
"interests of the community or the public."

Then the Chairman refers to the Dominion Grain Board and Mr. Gaby in reply states:

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" Such a body I would say would be very beneficial
" if it was acting in the capacity of an advisory
" body to any Government as to what goes on in
" the industry.
"Q That is all I am immediately asking about.
"A An advisory body but without powers of inter-
" fering with the affairs of the industry, only
" in an advisory capacity. In other words a
" co-operative capacity."
"Q Yes.
""A I should think that even a Board of that
" character would have insufficient knowledge of
" the industry to act sufficiently expeditiously
" in order to take care of many varying conditions
" that call for decision within the industry at
" almost a moment's notice. Such as price fixing
" and such conditions of that kind. I doubt if
" any Board would act in sufficient time to prevent
" harm to the industry."

Mr. Miller was asked by the Chairman:

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"Q CHAIRMAN: What would you think of standardiz-
" ation as such assuming that the various ranges are
" carried which would accommodate the ordinary car?

"A I think standardization is all right, as long as
" your standardization is based on the minimum and
" not the maximum.

" Then in closing there is a summary of the evidence of Mr. Russell, which I think is of value.

Mr. T. A. Russell of the Customs Branch of the Dominion Government was good enough to come and give us the benefit of his experience in these matters, and intimated from the evidence he had heard at least on the surface it appeared that the three companies mentioned were leaving themselves liable to dumping duty in view of the way they were carrying on their operations.

THE CHAIRMAN: We never had any final word from Mr. Russell, did we?

MR. FRAWLEY: No, we didn't. I do not know ---

THE CHAIRMAN: And no word from Dr. Camsell, either?

MR. FRAWLEY: No.

MR. HARVIE: Then I come, Mr. Chairman, to my summary of the remarks: and

SUMMARY RE: CRUDE CONTRACTS

One of the first principles and fundamentals to the establishment of a refinery in Calgary was the necessity of contracts for crude oil which would give security and adequacy in supplies for its operation.

Financial risks in many cases have been assumed in order to obtain such contracts.

With ample supplies and under the present system of conservation and proration in effect, - as to production, - the contracts have little or no effect on

the supply to independents who are not in the same position.

In the event of conservation not operating, then the field contracts are of value in the eliminating or mitigating of unfair practices in the field through discrimination in production.

In the event of a shortage of supply it might be unreasonable to ask the Company that has invested in production for one reason or another to pool its supplies to the advantage of those who have no investment and have assumed no risk in the production of crude.

We have always maintained that surplus supplies as prorated from time to time should be available to the independents at field price.

It will be noted from perusal of the British American crude pruchasing contract (Ex.132) that provision is made allowing the Producer to sell the production in excess of that being taken by the Company in accordance with the provisions thereof.

Mr. Bronsdon in his evidence stated that the investment, in order to make available these contracts to the Company, was in excess of $450,000., from which you will realize the importance that the Company has placed upon the security of supplies to its refineries.

To summarize, I would suggest that the practice adopted by the various refining companies of contracting for crude supply over an extended period of time is justified, if not essential, to protect their investments in refineries and to give security and adequacy in supplies for its operations, or, as the Chairman so aptly put it - "that every refinery should be allowed to contract in order

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"that it may have a back-log of supply".

The form of the contracts and the manner in which they are obtained would also appear to be quite in accord with the views of Dr. Frey on these points.

SUMMARY RE: CONSERVATION, ABSORPTION PLANTS and NATURAL GASOLINE

Gas contracts were made at considerable investment of the Company to justify its capital investment for absorption plants to assist in conservation of the natural gas that was being produced in the Valley. The Company has expended over half a million dollars in the establishment of its Absorption Plant, pipe lines and investments in contracts to protect its future supply. Closing in of these wells would affect such investment seriously.

Evidence shows that there is no unanimity of opinion as to the effect that the closing of the gas cap would have in the production of crude, and if it is the opinion of the Commission that it should be beneficial to the crude producer, the crude producer then should be required in some form or other to contribute towards compensation for the investment that has been made prior to the advent of crude production.

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This would also apply to the investments in absorption plants which were made in good faith on the information then available as to the character of the field in which they were then operating.

In Mr. Bronsdon's evidence, it was shown that the Company had expended approximately three-quarters of a million dollars in the obtaining of crude contracts, gas contracts and the establishment of an absorption plant within the Valley. There is still a large investment in these assets, including contracts, as the plant has not been sufficiently long in operation to write off its original investment.

To sum up, I would suggest that generally speaking the witnesses are unanimous that great care and thought should be given to any conservation scheme before it is put into effect in a manner that will adversely affect any vested interest, and that any such scheme should carefully weigh the advantages and disadvantages that would be derived from it; that all interested parties should be given ample opportunity to present their case; that present investments should be protected or those with investments properly recompensed, and provision should be made in a manner that would be fair both to those with investments in the field and to the Conservation Board to allow access to the Courts.

It will be noted little has been said respecting the necessity of having "Natural Gasoline" for refinery operations. As I understand the arrangement made by Commission Counsel, this matter is being dealt with by correspondence between Dr. Brown and all affected parties and that later this correspondence will be filed and dealt with.

THE CHAIRMAN: Do you think there is an alternative, Mr. Harvie, to compensation in cash, and that is by departing from what may be the Conservation Board's ideal regarding the getting up of the crude oil, by allowing a certain amount of natural gasoline to be produced from the gas-cap even though it be not ideal conservation, but rather ideal conservation plus recognition of equity?

MR.HARVIE: I think there must be some half-way house like that, even, Mr. Chairman. Then what the solution is, I think, requires very careful study of those interested. The situation as it now is and as it will be in years to come in connection with gas from the crude wells, and generally there must be real consideration given to those vested rights that obtained at a period when that was the only type of field there was, a gas field.

THE CHAIRMAN: You are one of those that has vested rights? What is your suggetion? Money is one thing.....

MR.HARVIE: I would think as an alternative that if provision was made to allow sufficient gas from the gas-cap to allow the absorption plants to carry on until such time that they are amortized or until some other situation arose that they could be looked after, it might be a fair one.

MR. COMMISSIONER LIPSETT: Does not that say that you continue the waste if yoh do that?

MR. HARVIE: There again we refer to Dr. Frey's comments on the subject. He says that depends on the interpretation of waste. I think Mr. Mahaffy very

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effectively pointed out there were at least two interpretations to be put on "waste". If you take the one that the Conservation Board apparently is taking that the crude gas can just go and be burned once it has done its job, as soon as it has lifted the oil, that is one situation. The other situation is that expressed by Mr. Mahaffy, and it is applicable to the B.A. plant, that part of the gas that is processed through the B.A. plant is burned for either heating and fuel purposes. All the South end of Turner Valley, the Highwood-Sarcee has a distributing system and obains its gas from that plant.

THE CHAIRMAN: If I understand you, you would go the further length of saying "even though it is waste you cannot get ideal conservation in consonance with equity in a field in which divided ownership exists and was in full play before any kind of conservation was imposed upon it?

MR. HARVIE: I think that is true if it is dealt with one way. And the other way we assume that the contention of the engineers that say that the gas is useful for raising the crude in the crude area, then I think maybe you can in all fairness close in the gas-cap as far as compensation is concerned and let the crude wells pay for that lifting power the same as they would for any other thing they use. And that might be the solution. It does not solve the problem Mr. Mayland has voiced, that that would also do him out of the product that he needs. Just on that point you did ask me whether I agreed in all respects with Mr. Mahaffy's contention, excepting where I say otherwise. I think generally speaking I do. But it must be pointed out that our evidence is

that we do not require the same percentage of absorption gasoline as Mr. Mahaffy's clients apparently do.

MR. COMMISSIONER LIPSETT: Have you given any thought at all to, first of all, assessing an amount of gas that can be allowed without waste and then rationing the allowable among the various parties interested, somewhat like food is rationed at the present time in war, irrespective of any contract or anything else; that it is essential for the good of the whole country?

MR. HARVIE: Do you mean by that that possibly only one plant be allowed to operate?

MR. COMMISSIONER LIPSETT: Well I had not thought of it in that way. Have you considered the case that it should be given to all parties requiring it proportionately?

MR. HARVIE: I think if the amount allowed is sufficient to operate a plant effectively and efficiently, that might be the solution. On the other hand if the amount allowed is such that none of the plants could operate efficiently, I doubt if it would be the solution.

MR. COMMISSIONER LIPSETT: Would you then have to go further and decide on the keeping open of one or more plants?

MR.HARVIE: There should be some scheme of a customs plant that would recompense all presently existing investment pro rata. It might be workable.

MR. COMMISSIONER LIPSETT: You have not thought out any concrete scheme or idea at all?

MR. HARVIE: There have been a great

many schemes over the last year or two given some consideration. But, Mr. Commissioner, the minute you get into that you get into the realms of engineering. You really have to sit down with an engineer before you can go very far. I think the suggestion that possibly a round table conference of all parties interested and with qualified advisers, might get some place.

MR. COMMISSONER LIPSETT: You get some idea of the complexity of the problem when you have to say on the one hand waste must go on, or on the other, inequity must be done.

MR.HARVIE: I think you can say universally as far as the parties affected are concerned,- it certainly applies to our company and I know Mr. Mahaffy made a similar statement, - that we all want to do everything within reason to conserve to the utmost, coupled with what is fair and equitable.

MR. COMMISSIONER LIPSETT: Mr. Mahaffy's point of view is that in doing that they are going to wipe him out.

MR.HARVIE: Not if they conserve to what is fair and equitable. If they conserve to engineering niceties, then he would be wiped out.

MR.COMMISSIONER LIPSETT: That brings you back to what I was more or less putting to you, that there must be then some engineering waste in order to do equity to him.

MR. HARVIE: I think so. Mind you, I think there is engineering waste in the gas that now comes from the crude wells. Surely to goodness just because it has lost some of its pressure does not make it invaluable.

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MR. COMMISSIONER LIPSETT: It has always seemed to me during the time I have been in this Province, it was a very great waste to see all of that gas going off into the air, through the last number of years, and everybody, I am sure, feels the same.

MR.HARVIE: Yes.

THE CHAIRMAN: You say under existing conditions the evidence is that in the crude oil area when the gas has served its purpose of propelling oil to the top of the ground it is let to escape into the air and burned.

MR.HARVIE: That is the fact, I believe.

THE CHAIRMAN: And you say that that is wasting what could be obained from it.....

MR. HARVIE: You could obtain approximately 50% as much absorption gasoline from that as you do from the gas-cap, according to the evidence. That is one thing. It has also got fuel value, and it has also got power value. Mr. Mayland's evidence is that he uses that gas for the operation of his plant. We use a lot of it for the operation of our plant.

MR. FRAWLEY: Does Mr. Harvie know why that is going that way? Why is it not being used to get this lesser quantity of natural?

MR.HARVIE: I think the evidence is quite clear, it is all a matter of economics; that the crude producers are not just quite certain of their position as to what effect it has on their individual wells by back-pressuring that gas sufficient to maintain the pressure that is required to put it through the

[illegible]

[illegible]

[illegible]

absorption plant.

THE CHAIRMAN: Again engineering.

MR. FRAWLEY: Therefore there is a serious engineering problem and perhaps you cannot just say there is a value there, unless all these engineering problems are ironed out.

MR.HARVIE: There is no evidence, I submit, to show that the value of the work that that gas does in lifting the crude is, in dollars and cents, more than what could be recovered from an absorption plant. I am not suggesting it is. I do not know. But I say there is no evidence on that point.

MR. COMMISSIONER LIPSETT: Was there not some suggestion that it was not worth the cost of collecting it at the present time, from a business point of view?

MR. HARVIE: There is that suggestion. The evidence is as the crude wells become older, the absorption gasoline content in that gas becomes greater, and that with a new well the gas has not as much value to the absorption plant as an older well. But the wells are scattered and with varying proration - the minute I imagine that a field is prorated back to 14,000 from 26,000 barrels that the gas pressure possibly would be increased.

THE CHAIRMAN: Are you all agreed, under the existing contracts covering the life of a well, that that gas that remains could be sold to anyone; or is it covered by the contract?

MR.HARVIE: On the gas purchase contracts, whether it can be.....

THE CHAIRMAN: No, the oil contracts.

You have contracts with individual producers for the sale to you of whatever their well produces.

MR. HARVIE: I can speak for our company, Mr. Chairman, that generally speaking where we contract crude oil we do not at the same time contract that gas; simply for the reason that until we know the economics of it we are not in a position to. We are out looking for crude gas and once the situation justifies it we undoubtedly will endeavour to contract it.

THE CHAIRMAN: The existing situation is you have not got it tied up?

MR. HARVIE: No.

THE CHAIRMAN: And if they want to sell it to someone who will take it.....

MR. HARVIE: There is a definite effort to rectify that situation as quickly as it can be done.

MR. COMMISSIONER LIPSETT: Are there any wells tied up to give you the gas if it is ever of commercial value from which you are in fact not taking at present the gas?

MR. WATT: Yes, one or two instances.

MR. COMMISSIONER LIPSETT: That is where they are not worth taking the gas at present, is that so, Mr. Watt?

MR. WATT: Where a well has not sufficient pressure to put the gas into the gathering lines.

MR. COMMISSIONER LIPSETT: If it ever becomes possible to collect it you have contracted you will collect it and they will sell it?

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MR. WATT: Yes but if in the meantime another company should wish to take that gas we cannot stop them. But if the time comes when the contract is still available we shall.

MR. HARVIE: Anything else on that point? If not I will proceed to my summary on field price.

SUMMARY re FIELD PRICE

A great deal of evidence has been heard in connection with the posting of the Field Price and it is well that this has been the case as we consider it is a matter of the utmost importance to all branches of the industry as well as to the public that the price for crude should be a fair and proper one.

We are of the opinion that the manner in which the present posted price was arrived at was a proper one, having in mind competing crudes, the extent of the market to be supplied, the requirements of the refiners and the interests of the producer. We agree that, in order to give effect to these factors and to maintain a sound basis for establishing the Field Price on crude that recent changes would justify the increase in the posted Field Price to $1.28 as suggested by Mr.LeSueur.

Our Company is continually watching changing conditions that might affect the posted Field Price and, as stated by Mr. Miller, if at any time we should come to the conclusion that the price as posted is not an equitable one, we would endeavour to see that a new price was posted to give effect to such changes.

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PIPE LINE SUMMARY

It would appear that while the present situation is such that the pipeline to Regina might be justified, this project has not yet developed to such a point that consideration can be given to its effect at the present time.

This, I believe, is an appropriate place to deal with one other matter related to the subject of the pipe line and that is the recent reduction in the pipe line transportation charges made effective as a result of the preliminary report of this Commission.

This reduction amounts to 5½¢ in respect to crude moved to and consumed in Calgary, being the reduction in pipe line rate from Turner Valley to Calgary. There is an additional 2½¢ reduction on loading charges, which, as far as our Company is concerned, and I think generally speaking the same situation exists in regard to other companies, applies only to crude moved out of the Province, such as that moved to our Company at Moose Jaw, the Imperial Oil at Regina and the Anglo-Canadian at Brandon, making total saving of 8 cents on crude shipped by tank car out of Calgary.

It has been asked how this saving in cost of crude delivered to the refinery doors should be dealt with. The evidence, I think, clearly establishes that such savings in transportation should be passed on to the producer, and we must therefore deal with savings that have been in force from the effective date of the Order, that is the 3rd of July last. In the case of our Company, from the 3rd of July to the 30th of November last, inclusive (that is the time the reduction in pipe line rate has been

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in effect) there has been delivered to our refinery through the pipe line a total of 998,233 barrels of crude of which 400,922 have been re-shipped by tank car to Moose Jaw, leaving a balance of 597,311 barrels consumed or stored at the Calgary Refinery, which is the greatest figure that could be considered as applicable to Alberta business - that is 597,311 barrels - as even if all this was refined at the Calgary Refinery, a considerable portion of the products are shipped from that refinery to points outside this Province. I think Mr. Gaby's evidence was 30% approximately.

I do not believe it is within the purview of this Commission to deal with anything other than crude used in Alberta operations. I will, therefore, take this latter figure to arrive at the saving that has been effected by our Company through the reduced pipe line rate. This saving of 5½¢ a barrel on 567,504 barrels amounts to $31,312.72.

I am using my old figures and will readjust them again.

Future savings will be dealt with by the new field price when posted, by passing the full 8 cents on to the producer. We, therefore, have only to deal with the said saving of $31,312.72.

Then to adjust those to the correct figure there should be added $1,929.51, making approximately $33,000.00 odd.

It has already been pointed out that through price reductions that have been granted the consumer in July and October last, a great deal more than this amount has been already passed on to the consumer, with the result that we contend that any saving effected by reduction in pipe

line rate has been more than offset by price reductions to consumers.

There is another way the matter might be looked at. In all the figures submitted to this Commission as to operating costs, etc., as far as our Company is concerned, no figure has been included to cover the cost to our Company incurred in connection with the hearings of this Commission. This has developed into a very substantial item and one that must be given consideration to. In our case, the costs incurred in this connection have exceeded the amount of the saving realized by our Company through the reduction in the pipe line transportation charge. In view of these situations we submit that this Commission would not be warranted in making any recommendations that might have the effect of dealing with these so called savings otherwise.

To give the Commission an indication of the extent of the reductions put into effect in Alberta this year; I am advised that the actual reductions in selling prices on white products in Alberta in the year 1939 to date, after making allowance for reduction in freight rates, the actual reduction in the sale price per barrel of crude amounts to 19.05 cents per barrel. Comparing this figure of 19.05 cents per barrel with the 5.50 cents reduction in pipe line transportation, it will be realized that the industry has already passed this saving on to the consumer a good many times over."

.COMMISSIONER LIPSETT: Do you still say $1.28 may be taken and posted as the fair field price?

MR.HARVIE: Yes, I think to be

consistent, on the basis that field prices are arrived at, I think that is the correct price and I have no doubt in due course it will reach that. There have to be a lot of adjustments and these things do not happen overnight.

THE CHAIRMAN: Are you suggesting that a portion of that increased price to the producer be retained to cover costs?

MR. HARVIE: Well I doubt very much, Mr. Chairman, if any new field price will be made retroactive. I think the usual procedure is.....

THE CHAIRMAN: Then what are you suggesting? Where are those costs coming from that you are talking about?

MR. HARVIE: I just state that $33,000.00 is the saving we have effected to date in that 5½¢ and it could be made applicable.

THE CHAIRMAN: You say this Hearing has cost you more than $33,000.00?

MR.HARVIE: Oh yes, Mr.Chairman. As an alternative, I suggest that the cuts that have been put in this year alone, in July and October, amount to 19.05 cents a barrel, and this cut of 5½¢ is approximately one-third to one-quarter. In fact we have passed on three to four times as much to the consumer as we have saved or benefited by that 5½¢ pipe line cut to date.

MR. COMMISSIONER LIPSETT: In other words, during the time this has been taking place, you are 13 or 14 cents worse off per barrel.

MR.HARVIE: Yes, exactly.

MR. COMMISSIONER LIPSETT: That is why I asked you,

it does not follow from that at all that the field price should be increased 8 cents. In fact it would be an argument very much against it.

MR.HARVIE: You are dealing in one case with realizations and I do not think field prices necessarily have much to do with realizations on the sale of the products. I think field prices are properly set on a competitive basis with other crudes. And while it looks as if we are being squeezed both ways, I think that is inevitable and we will have to accept it.

THE CHAIRMAN: Well supposing we wanted to pay your costs; supposing we assumed that what you had got from not passing on this pipe line reduction to the producer - which Mr. LeSueur says is the logical thing to do - did not more than compensate for any costs you have been put to, where do you suggest it should come from?

MR. HARVIE: The general treasury I presume is the only place I can suggest.

THE CHAIRMAN: I just wanted to know what your suggestion was.

MR.HARVIE: There are other places it can come from other than the producer by not passing on the pipe line saving, although quite frankly I do not think our Company wishes to have our costs paid by the producer, as such. That is speaking purely on my own initiative. I have no instructions on that.

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MAJOR LIPSETT: If you take the increase of the $1.20 as inevitable, apart from anything else, the fact that you have not passed it on until now or some future date would mean that a great deal of your costs have already been provided for.

MR. HARVIE: That is an alternative way of looking at it, Mr. Commissioner. I say that there have been three or four times that that amount has been passed on to the consumer, the purchasers of products, three or four times.

MAJOR LIPSETT: But for an entirely different reason.

THE CHAIRMAN: Yes.

MR. HARVIE: Oh, I grant that, but when you are comparing our returns and our profits and our position this year these things have to be taken into consideration and adjusted and I say you can put it any place you like.

MAJOR LIPSETT: I quite follow, the effect of your argument is this, as I understand it, ethically or under the competitive system, as soon as the pipe-line reduction took place the field price should have been increased to $1.28.

MR. HARVIE: Well I would say the factors then commenced working which would ultimately bring that about.

MAJOR LIPSETT: Yes, and if you had been fortunate enough to retain that extra 5½ or 8 cents from then until now, that might fairly be considered as a contribution towards your costs.

MR. HARVIE: It is just the comparison I make. I do not ear-mark that money for that purpose.

MAJOR LIPSETT: Oh, no, but the rise would have that effect, notwithstanding the fact that you had been

getting less margin in your operations in the province.

MR. HARVIE: Yes, I think they are arrived at in two different ways, the field price one way and the realization on the other and we are squeezed in between and that is one of those inevitable things that allow us to have a better return in the good years.

Then summary re refining.

SUMMARY RE: REFINING

Our Company is not directly interested in crude production or pipeline transportation operations within the Province, but has a considerable investment in some of the wells in Turner Valley. It also has its absorption plant in the Valley and its crude and gas contracts. However, for all practical purposes, I believe it might be stated that our operations within the Province start at the refinery door.

Subject to its obligations under purchasing contracts, the evidence is that it buys crude on the open market where it can be purchased the cheapest, regardless of its interest in any producing wells.

The Company's refining experience within the Province has been limited to its refinery at Coutts, which is now closed down, and its new Refinery at Calgary which has only been in operation for a comparatively few months, with the result that any figures that have been or could be supplied by the Company would, at best, be not much more than estimates. It has, therefore, been necessary to rely on the experience of others operating in this Field, the estimates of the Company's officials and the Commission's expert,

Dr. Brown, who in his evidence stated that he had inspected our Company's new plant and that, along with the operations of the other Company into whose affairs he had examined, the picture was not an unreasonable one.

We submit that it is apparent from the evidence that the Company was fully justified in erecting its refinery in Calgary at the time it did; that the refinery is operating on an efficient basis and that it is one of the factors tending toward that competition which is so essential and advisable in the industry.

SUMMARY RE MARKETING

I will first deal with some specific items.

DUPLICATION OF OUTLETS

We submit that while there seems to be the opinion that there is excessive duplication in retail or wholesale outlets, the evidence clearly discloses that this is actually not the case and that the situation is such that the natural forces that inevitably come into play will look after this situation satisfactorily.

DRUMS

We submit that the practice of providing drums free of charge to the farmer is not a sound one, but that this situation is now rectifying itself. If any action were to be taken it is suggested that the existing supply of drums should be sold at their current value and thereafter the consumers should be required to supply their own receptacles.

FARM DELIVERIES

We submit that the practice of giving free deliveries to farmers is not a sound one but that here, again, the new, more up-to-date systems of distribution being inaugurated by numerous companies is gradually rectifying the situation, possibly as rapidly as is advisable.

COMMERCIAL CONSUMERS

We submit that the practice now employed of giving special discount to commercial consumers is usual and proper and that if any change is to be made, it should be that the discount be dispensed with rather than extended.

STANDARDS

We submit that there may be no theoretical objection to establishing standards for various grades of products being sold, but that from a practical standpoint such a pra tice is fraught with difficulties and should not be attempted unless, along with it, an adequate policing system is also provided for.

JOBBER

We submit that the jobber inasmuch as he is already established, is a real factor in the competitive system and in these circumstances his existence is justified.

UNDIVIDED DEALERS

We submit that the practice of encouraging undivided dealers by special discount is sound, increases efficiency and thereby reduces costs and extends

more efficient service.

MR. FRAWLEY: Mr. Harvie, just on that, I made a note this morning that Mr. Miller would discontinue the A. B. A., didn't you say that?

MR. HARVIE: Yes, if there was a proviso there. Mr. Miller just made the statement that he would be willing to dispense with the A. B. A. 1 cent discount providing all others did. I will read it:

> " Speaking personally for our "company I would have no objection to the authorized "Buyers Agreement being discontinued and the dealer "being sold at tank wagon markets and we will sell our mer- "chandise on its merits, we will take our chances with "anybody else as to being able to create that consumer demand "for our products to take care of the sales we wish to "make."

MR. FRAWLEY: Who is going to start? Mr. Miller should start it.

MR. HARVIE: PRICE

We submit that the evidence discloses that through the intensive competitive system now employed throughout the Province in the marketing of Petroleum Products, the consumer is getting an equivalent or better product at a considerably reduced price than in surrounding territories which might be considered comparable.

CAPITAL AND PROFITS

We submit that the capital employed by the Company in its marketing operations is reasonable and that the rate of return the Company has received in past years or in any one year is low.

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GENERAL

We submit that the marketing operations of this Company are being carried on in an aggressive, efficient and economical manner, which renders the consumer effective and satisfactory service at a most reasonable price.

SUMMARY RE COMPETITION

We submit that the public is best served through this industry's operations being carried on under the competitive system- that there is actually true and keen competition of a nature that allows the system to work effectively, and that any undue interference by regulations or otherwise would only defeat its own purpose.

SUMMARY RE TAXATION

We submit that the petroleum industry as a whole and particularly its marketing and consumer divisions are being subjected to unduly high special and direct taxes that are out of line with taxes derived from other industries, with the result that an undue proportion of taxes is borne by that portion of the public of this Province that requires and uses motor vehicles.

We submit that undue taxation of this nature is detrimental to the industry and may be carried to a point that will defeat its own object by being responsible for the maintenance of a price level that discourages increased consumption, and that taxes in this Province on this industry are such that would warrant this Commission in recommending that the matter be referred to the proper authorities for review and remedial action.

E. L. Harvie, K. C.

SUMMARY RE CAPITAL

We submit that the capital expenditures made by our Company in this Province have all been justified and are reasonable in amount, and that the amount of capital on which we are entitled to a fair rate of return is that sum representing the value of the property which can be proved to be capable of use for the benefit of the public.

(Go to Page 16,454)

SUMMARY - RE: RATE OF RETURN

It is submitted that the Petroleum Industry in all its branches is a hazardous one and, as such, is entitled to a rate of return commensurate with the risks taken. Mr. Bronsdon in his brief (Ex.475) has outlined some of these risks. To illustrate only one of them in refinery operations referred to by Mr. Bronsdon: that is the change in the economic supply of crude, we have only to refer to our own operations.

It was the judgment of The British American Oil Company, Limited in 1933 that investment in a refinery at Coutts, Alberta, was a sound and economical business venture, in which it would be possible to amortize the capital investment before economic forces could shift to a point that would require the abandonment of the processes in use, or the refinery at that particular location. In order to economically transport this crude, Mr. Bronsdon has pointed out that a pipe line was necessary from the Cutbank Field, in which the Company had crude production of its own to the location at Coutts which was constructed at an estimated cost in excess of $150,000, along with a refinery costing in excess of $550,000 at Coutts.

Fortunately, the Company has been able to dispose of its crude which it had in the Cutbank Field to others. The plant at Coutts was replaced by the refinery at Calgary, at a cost of, up to the period the evidence was given, of $1,500,000, which may reach

$2,000,000, before completed, in order to compete with the new Turner Valley crude which was available in Alberta.

The same judgment prompted the construction and investment in an absorption plant and gathering lines for processing gas in the Turner Valley field, at an expenditure in excess of $350,000, which, due to the curtailment and conservation orders placed by the Government, has been curtailed very greatly in its operations, and it is doubtful whether earnings sufficient to amortize the investment can be realized. We consider that capital represented by investments such as the above that become no longer useful through no fault, or possibly even error in judgment, of the Company, should be given consideration to, either by allowing it to remain in the capital setup, or looked after through a more generous rate of return.

And we submit that the returns suggested by Dr. Brown of 15% on plant investment, 6% on inventories and 7% on accounts receivable are the minimum that should be considered, and that possibly in view of the extremely uncertain, varying and hazardous conditions of operations in any young, comparatively undeveloped and sparcely settled Province, such as Alberta, the rate suggested by Mr. Bronsdon of 15% on the entire capital employed in the industry in the Province is a more reasonable and equitable one.

We would again point out, in view of all these conditions that are met with in this Province, the necessity of looking at the rate of return

a company receives over a period of years, we submit at least ten, rather than that received in any one year, so as to allow the industry to average a reasonable rate of return over both good and bad years.

This return should be figured and allowed not upon the depreciated capital but on that amount of capital that is properly and usefully employed by the industry within the Province.

Mr. Nolan in his summary illustrated the effect that the July and October reductions, put into effect in the year 1939, would have on the rate of return as applied to his Company. He stated that the rate of return as estimated by Mr. Cottle was 10.5%. Giving effect to the two reductions mentioned aggregating $141,000.00 the rate of return would be reduced to 7.59%.

I thought it might be of interest to the Commission to give comparable figures as far as our Company is concerned.

In all cases the capital set-up taken was that used by Mr. Cottle. It was arrived at on the basis of the net depreciated value of the capital assets. Our Company's estimate of its rate of return for 1939 (Ex.479) was 5.87% and, after giving effect to the price reductions to date which aggregate $85,901.12, the rate of return would be reduced to 3.97%.

I might say, Mr. Chairman, that that figure of $85,901.12 being the reduction that effects our Company is not in evidence either.

The Chairman asked Mr.

Nolan if the reduced rate referred to by him of 7.59% had taken into account the new agreement with the railways, to which Mr. Nolan replied that it did not. In this connection it should be pointed out that the so-called agreed changes rate with the railways only affects the operations of Imperial Oil, McColl-Frontenac and the Hi-Way Refineries of Edmonton, these companies being the only ones carrying on their operations in a manner that will allow them to fulfill the requirements of these agreements. It will therefore be seen that no further adjustment is required in this respect in considering the estimated rate of return of our Company.

In comparing the rates of return being received by the Imperial Oil and by our Company it should be pointed out that, while our rate of return appears lower than that of the Imperial Oil, these figures cannot be considered as comparable in view of the method employed by Mr. Cottle in arriving at the capital value on which the rate of return has been figured. He has used the net depreciated value and as the Imperial Oil assets have on the whole been in existence for a longer period than those of our Company, they have been subjected to a much greater depreciation, leaving a relatively smaller capital value on which the rate of return applies.

In this connection, we would again point out that we do not agree with the basis that Mr. Cottle employs in arriving at his figure of capital employed. One great objection to it is, that

working on his basis, the rates of return to give an average over all rate throughout any period, might vary from 30% to 1%, depending on the age of the plant.

SUMMARY RE: REGULATIONS

In my summary on Marketing I have already dealt with such items as -

Duplication of Outlets

Drums

Farm Deliveries

Commercial Consumer Accounts

Undivided Dealer, and

The Setting of Standards,

and now submit there is nothing in respect to any of these items requiring Government interference by regulation or otherwise.

We submit that any advantages that might be derived from regulations requiring the fixing or posting of prices are more than offset by the disadvantages.

We submit that all legislation and regulations now in effect should either be strictly enforced or done away with.

In addition to the existing Provincial Regulations there are now regulations under The Customs Tariff Act. We submit that so long as there are such regulations they should be effectively enforced.

We submit that legislation of the type of The Combines Act should be clarified and liberalized so that it will not tend to prevent proper and effective co-operation within the industry in respect

to matters that can best be dealt with in that manner.

We agree that this industry, like any other industry, should be subject to all general regulations such as compliance with fire, building and health regulations, town planning, and others of general application, but beyond this point we submit that with conditions as we have found them as a result of this inquiry, any interference or control by a Government agency of any kind is not warranted or advisable, and that the industry is better off and the community better served without such interference, regulation or control by the Government; that Government interference is only justified in case of emergency and then only for that period and to the extent that may be required to rectify that particular situation.

We agree that co-operation of the right type between the Government and the industry would be beneficial, but care should be taken that this is in a form that will engender mutual confidence rather than otherwise.

(Page 16,460 follows)

THE CHAIRMAN: Mr. Harvie, in view of what has been said on that subject it struck me as somewhat significant that in time of war, for example, there just seems to be no question at all but what Governments must intervene; that this competitive system just does not seem to protect the public, it is thought. Prices rising daily so the Government steps in and says that they shall stop. And what do you say about that?

MR. HARVIE: I would say that there is no evidence of that at the moment as far as this industry is concerned.

THE CHAIRMAN: The principle is just the same whether it is oil or flour or sugar or bacon or lard.

MR. HARVIE: I think that is covered by the last phrase I used there in the conclusion, "that Government interference is only justified in case of emergency and then only for that period and to the extent that may be required to rectify that particular situation."

THE CHAIRMAN: What I am asking you is: Why would not a freely working competitive system serve at all times? Why times when Government must interfere and say that the competitive system shall not have full swing? Why is it ever necessary if it functions in the fashion that has been described to us, and indeed as Dr. Frey has pointed out, why should it be that the minute you come to times of stress, it seems essential that the competitive system be immediately interfered with?

MR. HARVIE: I think theoretically there is no reason why that situation should arise in times of stress but practically apparently it does. But I see no

undue evidence in Canada to date as a result of this War.

THE CHAIRMAN: You have Boards in Canada saying you must not.

MR. HARVIE: That may be the reason. But there is no Board as far as this Industry is concerned and there has been no evidence since the War started that there has been anything but reductions.

THE CHAIRMAN: I am not talking about oil at the moment. I am talking about the competitive system, which you have said should not be interfered with, certainly not except in those cases which Dr. Frey outlines, as I understand you. Then I say, "How is it that it does not work sometimes seemingly? If the competitive system is the fine-working, well-oiled machine that automatically takes care of things in the long swing, why is it that there is ever a chance for profiteering and that there must be Government interference? Why does not competition take care of it?"

MR. HARVIE: Possibly the answer to that is, we will take the munitions business. A lot of plants normally in the machinery business convert themselves to the munitions business.

THE CHAIRMAN: But take sugar and lard.

MR. HARVIE: I do not know. I cannot tell you the reason. I do not know as far as that is concerned.

THE CHAIRMAN: Thank you very much. Who have we next?

MR. FRAWLEY: Mr. MacKenzie has been waiting at my request most of the afternoon and I take it

Mr. MacKenzie will now follow.

THE CHAIRMAN: And who follows him?

MR. FRAWLEY: Then Mr. Plotkins will follow Mr. MacKenzie and Mr. Brownlee will follow Mr. Plotkins and then Mr. Davies and that is all other than my humble self.

(At this stage the hearing was adjourned until 10.30 A. M. 12th December, 1939.)

The Province of Alberta

IN THE MATTER OF THE PUBLIC INQUIRIES ACT

—and—

IN THE MATTER OF a Commission, dated the 12th day of October, A.D. 1938, to inquire into matters connected with Petroleum and Petroleum Products

Commissioners:

The Honourable MR. JUSTICE McGILLIVRAY
(*Chairman*)

—and—

L. R. LIPSETT, ESQ.

Session:

CALGARY, Alberta DECEMBER 12th, 1939

VOLUME 148

FINAL ARGUMENT

10.30 A. M. Session,
12th December, 1939.

THE CHAIRMAN: All right, Mr. MacKenzie.

MR. D. G. MACKENZIE, K. C.: Mr. Chairman and Mr. Commissioner, I have a written submission that I propose to stay fairly close to and I thought it would be better to give you each a copy, therefore, I have placed one on your desk.

SUBMISSION BY COUNSEL FOR THE ETHYL GASOLINE CORPORATION

The Ethyl Gasoline Corporation is an American Corporation incorporated under the laws of the State of Delaware. It is the holder of Canadian patents covering -

(a) a compound known as Ethyl fluid;

(b) a motor fuel composed of gasoline and the said fluid.

The Canadian patents were issued in 1925 and the Corporation has for a number of years been engaged in the United States of America at Baton Rouge, Louisana, and Deep Water, New Jersey, in the manufacture and sale of the fluid.

It is easy to understand that the Corporation could not manufacture a sufficient amount of the motor fuel composed of gasoline and fluid to supply the public demand and the Corporation does not manufacture, refine or sell any gasoline.

The Corporation sells the Ethyl fluid which it manufactures to such refiners of gasoline as it licenses to manufacture its patented leaded gasoline and the Corporation does not sell the fluid to any person other than refiners of gasoline to which it has given licenses.

D. G. MacKenzie, K. C.

The Order-in-Council setting up this Commission asked the Commission in paragraph 1 (f) to enquire into the operations of the Ethyl Gasoline Corporation in Alberta and the effect of its licensing system upon the refining, distributing and marketing of petroleum products in this Province.

The Programme of Enquiry of this Commission deals with the business of the Ethyl Gasoline Corporation under the following headings:-

1. The Cost of tetra-ethyl lead used in manufacturing regular gasoline, 70 octane;
2. The cost of tetra-ethyl lead used in manufacturing Ethyl gasoline, 76 octane;
3. An enquiry into the nature of the licenses issued by the Corporation to refiners in Alberta and outside Alberta for the manufacture of Ethyl gasoline and of regular, 70 octane, gasoline and the existence or otherwise of any discriminatory practices in connection therewith;
4. An enquiry into the nature of the licenses issued by the Corporation in Alberta and outside Alberta to distributors for the sale of Ethyl gasoline and of regular, 70 octane, gasoline and the existence or otherwise of any discriminatory practices in connection therewith;
5. The reasonableness or otherwise of the premium of 2½¢ charged for Ethyl gasoline and a comparison with the premium charged in other parts of Canada and elsewhere; and
6. Whether the effect of the licensing and other policies of the Corporation tends towards discrimination

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against refining in Alberta of leaded gasoline and promotes the importation of Montana refined products containing tetra-ethyl lead.

Taking the Programme of Enquiry and dealing with the matters there enumerated I deal first with the cost of tetra-ethyl lead used in manufacturing regular gasoline and Ethyl gasoline, numbers 1 and 2 of the headings contained in the Programme of Enquiry.

The Corporation has always charged the same price for the Ethyl fluid which it sells to its licensed refiners irrespective of the amount purchased and does not allow discounts for quantity purchases.

Originally the price of the fluid was 1¢ per cubic centimeter or $36.85 per gallon.

Vol. 104, p. 11703, H. W. Kaley

In 1930, the date of the earliest refiners contract put in evidence, the price of the fluid had been reduced to $27.25 per gallon,

Texas Company Contract, Exhibit 497 Z
Vol. 104, p. 11679

which is equivalent to .67 of 1¢ per cubic centimeter and the price has been voluntarily reduced several times since 1930 by the Corporation and the price is now $9.85 per gallon which is equivalent to .26 of 1¢ per cubic centimeter.

The Corporation has made eleven voluntary reductions in price of the Ethyl fluid and has never made any increase.

Exhibit 498, Vol. 104, p. 11680
Vol. 104, p. 11728

If the fluid is purchased in tank car lots the Corporation pays the freight. If it is

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purchased in drums the purchaser pays the freight and pays $10.00 for each drum, which sum of $10.00 is refunded to the purchaser when the drum is returned to the Corporation.

The railway regulations provide that nothing can be shipped in a car along with drums of Ethyl fluid and a car load of drums is 44 drums but the Corporation has arranged with the railway companies that the minimum rate will be given if there are 16 drums in a car.

The cost of adding 3 cubic centimeters of Ethyl fluid to an imperial gallon of gasoline would be .897 of 1¢ if the purchaser was paying the freight. If the Corporation paid the freight the price would be .819 of 1¢. The cost of adding 1.08 cubic centimeters, which is the average amount of fluid added per gallon for "Q" gasoline in the United States and Canada, is, including freight and duty, .32 of 1¢ and if no freight is paid .29 of 1¢.

Vol. 104, page 11717
Vol. 105, page 11850

These prices do not include the cost of labor used in blending or interest on capital cost of the installation, which installation is necessary to mix the fluid with the gasoline, so that the answer to Numbers 1 and 2 of the programme of Enquiry is $9.85 per gallon, .26 of 1¢ per cubic centimeter, the cost per gallon of Ethyl gasoline is 3 cubic centimeters are used .89 of a cent and the cost per gallon of "Q" average .32 of a cent. The difference between Ethyl and "Q" gasoline at the refinery is 1¢ per gallon.

I think some person gave that evidence quite recently before the Commission. I do not remember just who it was.

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The third heading in the Programme of Enquiry deals with the licenses issued to refiners in Alberta and the existence or otherwise of any discriminatory practices in connection therewith.

When the Corporation first started business there was a lack of knowledge of the hazards connection with the manufacture, transportation and handling of the Ethyl fluid and because of this a number of cases of lead poisoning took place in the manufacturing operations. The Corporation voluntarily ceased to sell its product for a year and when it commenced business again it had certain regulations included in its contracts to refiners which it insists on being followed in connection with the transportation of the fluid to the refineries and the mixing of the fluid with the gasoline.

A Medical Department of the Corporation was formed to study the hazards involved and to set forth a procedure which would eliminate such hazards and this Department is continuing a study of the problems encountered in connection with the handling of the fluid and treated gasoline. It has formulated rules and regulations which it believes constitute the minimum precautionary measures for the safe handling, transportation, mixing and use of the fluid and the treated gasoline.

Vol. 104, page 11685, H. W. Kaley

In addition to the Medical Department the Corporation has established a staff of trained engineers who periodically inspect all equipment used in the blending of the fluid and gasoline to see that such equipment is constructed and maintained in strict accordance with the

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rules and regulations of the Medical Department.

The Corporation considers it of vital importance that the regulations with regard to handling and mixing are strictly observed. It would take very few cases of injuries to the health of the handlers or other persons of the fluid to seriously injure the good-will which the Corporation has earned for itself. The Corporation is afraid that the public will make no difference between the concentrated fluid and the treated gasoline and that if it becomes known that Ethyl fluid caused injuries or death to any person by lead poisoning this will reflect on Ethyl gasoline and would have a great effect on the sale of leaded gasoline and thus on the sale of the fluid.

Strict adherence to the rules and regulations has prevented further accidents even though the quantity of fluid handled today is infinitely greater than when the accidents occurred.

Vol. 104, page 11686

The Corporation does not now consider that there is very much danger in the handling of treated gasoline which has the maximum of 3.6 cubic centimeters of lead per imperial gallon and it may be that the regulations with regard to the maximum amount of fluid may be increased and the regulations as to handling of the gasoline may be relaxed as time goes on but the Public Health service of the United States still feels that it has not sufficient experience with the product to say that there should not be the lead signs on the pumps. The Medical Department of the Corporation is of opinion that there is no hazard in handling the leaded gasoline.

Vol. 104, page 11726, H. W. Kaley

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As examples of changes in some of the regulations, the Corporation now allows the fluid to be taken by truck from the railway to the refinery, which was formerly contrary to its rules, and this enables Gas & Oil Products to use the fluid at its refinery in Turner Valley, the fluid being loaded on motor trucks at the railway and transported to Turner Valley under the Supervision of Field Representatives of the Corporation. The Corporation also allows refiners to join together for the purpose of obtaining between them a car load of drums of the fluid, the drums being divided among the refiners at destination under the supervision of Field Representatives of the Corporation.

Vol. 104, page 11722

The Corporation has trademarks which it insists on being used in connection with the sale of Ethyl gasoline and it regulates the name under which Ethyl Gasoline may be sold. It is usually the name of the licensed refiner combined with the word "Ethyl" and only those who have refiners' licenses may have their own trade name for Ethyl gasoline.

The Corporation does not charge any royalty on the sale of the leaded gasoline and does not make any charge or collect any fee for the granting of licenses to refiners to manufacture and sell its patented leaded gasoline.

All refiners in the Province of Alberta who have applied for licenses to manufacture and sell leaded gasoline have been granted such licenses. The form of the license agreement is uniform throughout

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Canada and no evidence has been given at this Enquiry that there have been any objections from any refiners to the form of the contract. No refiners' licenses have been cancelled by the Corporation in Alberta, and there are no exclusive licenses issued to refiners anywhere.

Vol. 104, page 11709.

The standard form of contract between the Corporation and the refiner, which is Exhibit No. 500, was gone over by Mr. Kaley and explained and this evidence is to be found at page 11729 and the following pages of evidence.

By the contract the refiner agrees to join in carrying out the regulations. He is given the right to sell leaded gasoline to other refineries and he undertakes to submit a trade name for Ethyl gasoline and he also undertakes to enforce the rules and regulations on his jobbers.

Suggestions were made that there was discrimination as between some refiners and mention was made of North Star Oil Company, Bell Refining Company and Maple Leaf Refining Company but I think it will be better to deal with these objections when dealing with the next heading of the Programme of Enquiry which relates to the licenses issued to jobbers and wholesalers.

In answer to enquiry Number 3, I would say that no discriminatory practices exist.

The next heading in the Programme of Enquiry is:

An enquiry into the nature of the licenses issued by the Corporation in Alberta and outside Alberta to

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distributors for the sale of Ethyl gasoline and of regular, 70 octane, gasoline and the existence or otherwise of any discriminatory practices in connection therewith.

The leaded gasoline is sold partly through wholesale and retail outlets owned by the licensed refiners, in part to licensed jobbers for resale to retail dealers and consumers and in part to independent retail dealers for resale to consumers.

The jobbers are licensed and the form of license is to be found as Exhibit 502. The license to jobbers obligates the jobber mainly to do two things:

(a) he agrees to see that the warning signs are properly placed on the pumps and in the case of Ethyl gasoline that the trade mark is properly placed, and

(b) that he will not dilute or substitute or allow gasoline to be diluted or substituted by any of his retailers.

Just as in the case of refiners' licenses there are no exclusive licenses to wholesalers.

The main criticism in connection with the licensing methods of the Corporation is concerned with the refusal of the Corporation to allow wholesalers or jobbers to sell Ethyl gasoline under their own trade name. It has been suggested by Counsel for the Commission, though there has been no evidence from any witnesses that it would be of advantage to wholesalers, that they should be allowed

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to sell Ethyl gasoline under their own trade name and that the Corporation should so alter its method of doing business as to give this permission. One reason given for this suggested change is that the wholesaler does not get the benefits of the extensive advertising program which the Corporation now has all over the country and which the Corporation pays for.

Mr. Kaley in Volume 104, page 11754 deals with this matter as follows:

"We service and look after the existence of a "minimum quality of Ethyl; we practically guarantee "the quality to the consumer through our advertising; "now coming back to the jobber, if a jobber had his "own brand and we found dilution, as we did, and I "am talking now from past experience today, because "10 years ago we did issue licenses for two jobbers "for their own brands; we found that not all jobbers "are good jobbers and not all jobbers are even disinter- "ested in substituting or diluting a product and we "found Ethyl gasoline, when we took samples from curb "pumps of jobbers who were just doing that, when they "had their own brand we were never able to trace that "gasoline back to the refinery from which it came. "Now we hold the refiner mostly responsible. We do "have jobber licenses and we do require the jobber to "agree not to adulterate or substitute any product "but at the same time basically it is the refiner that "we hold responsible for the maintenance of quality; "for that reason we only issue jobber licenses to "jobbers to sell under the refinery brand because we "want to make the refiner responsible."

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As Mr. Kaley also points out on page 1755 the Corporation has issued licenses to 15,000 jobbers and if the Corporation proceeded to pick and choose as to which of these jobbers would be entitled to sell Ethyl gasoline under their own trade name there would at once be an outcry of discrimination from those who wanted such privilege and to whom the privilege was denied.

It has been suggested by Counsel for the Commission that the Corporation can protect itself by only issuing to those jobbers in whom it has confidence.

Dr. Frey in his evidence at page 14516 which is in Volume 130 says:

"It seems to me that if a jobber were in a position "to offer to the Ethyl Corporation a suitable "quantity of gasoline of suitable quality and assum- "ing also that the Ethyl Corporation would be in a "position to determine before any batch was mixed "whether that gasoline was of a proper quality to "mix with tetra-ethyl lead and assuming that the "distribution system had enough sales to assure that "their gasoline would be sold within a reasonable "time and not deteriorate through age that it would "be immaterial whether that gasoline were in the "hands of a refiner or in the hands of a jobber as "long as the Ethyl Corporation could control the "quality and maintain its integrity before the public."

The suggestion is that the Corporation may pick and choose among its jobbers and this is something it does not want to do and Mr. Frawley in commenting on the burden it takes in choosing those to

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whom it will give licenses as wholesalers makes this remark at page 11,787, in Volume 105,

"I do think if I may be so bold as to say it, that "you have taken on the white man's burden in trying "to say it is just such a marketer that will do it "in the right way and another marketer will not do "it in the right way. I think you have to just "learn as you live."

I might remark here that in every instance in which the Corporation refused or delayed to issue a license to a refiner Counsel for the Commission asked Mr. Kaley about those instances. Now there is no ulterior motive in me bringing this to your attention, namely, that Mr. Frawley asked these questions because we welcomed all the questions he asked and we were quite prepared to give the answers but my point in commenting on that is that if Mr. Frawley as Counsel for the Commission, who has no interest in these things at all, at once asked questions, "Why did you give to one person and not to another", how much more will we be faced with that from the wholesalers themselves if we started with one wholesaler and said, "You can have a trade name", and to another "You cannot.", particularly when we have so many of them.

At Volume 105 Mr. Frawley brought to the attention of the witness that as late as July 1936 Gas & Oil Products had been refused a license. At Page 11,775 he asked if the Goodrich Company operating near Toronto had been refused a license.

THE CHAIRMAN: Where are you reading from?

MR. MACKENZIE: I have not that in my brief.

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I was just interjecting it and then he said, "Whether it is a change of heart or not it is a very good thing to know now and have on the record that all persons who have applied for licenses in this Province, particularly the refiners, have been licensed."

Now I go on from where I left off after remarking about the burden that the Corporation has taken on.

That is the position with regard to the granting of the right to sell Ethyl gasoline under its own trade name to wholesalers. It has been tried and the Corporation is of the opinion that the trial was not a success and it is not looking for any additional burdens but must, as Counsel says, learn as it lives.

The suggestion has been made that under the guise of being refiners certain companies by reason of being licensed as refiners though in fact they are only wholesalers have an advantage over other wholesalers and particular mention has been made of the North Star Refining Company, Maple Leaf Refining Company, Bell Refining Company and Great West Distributors.

The Mapel Leaf Refining Company and the Bell Refining Company are in the same category. They are refiners but owing to amalgamation are not now actually refining independently and the company and the plant has been acquired in one case by Imperial Oil Limited and in one case by British American Oil Company.

The suggestion has been made not that the Maple Leaf Refining Company and the Bell Refining Company should have their refiners licenses cancelled

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but that because they are enabled under their refiners licenses to sell Ethyl gasoline under their own trade name other wholesalers should be permitted also to do this. The position which the Company has taken is that it may be that these other companies which have ceased to refine should have their refiners' licenses withdrawn but the Corporation is reluctant to do so because it has never cancelled a refiner's license, but the remedy for the situation, if any remedy is required, would appear to be rather a cancellation of such licenses than an extension of the privilege to wholesalers to sell Ethyl gasoline under their own trade name.

Mr. Kaley at page 11762 says this:-

"I think it is true that there is, that it is "perhaps a bit inconsistent and the only way I "would answer that question is this way, we have "never cancelled a refiner's license merely because "they were taken over by somebody so long as they "retained their corporate entity. We have never "cancelled a jobber's license. In other words we "are slow to cancel any kind of license once the "holder has it. Now it is entirely possible that "we should cancel the Bell license. I am not "prepared to say, if they no longer refine and market "merely as a jobber, it is in effect extending to the "British American Oil Company the use of two brand names "I suppose. Now that would appear, and I think that "you have some right to feel that we are inconsistent "in that respect, but as I say the reason we have not

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"taken any action is exactly the same as perhaps we "have not in other cases that is we do not like to "cancel licenses once they are in existence."

MAJOR LIPSETT: Was there any further decision as to that, Mr. Mackenzie, is that still the position?

MR. MACKENZIE: That is still the position.

MAJOR LIPSETT: That you still want to maintain those licenses?

MR. MACKENZIE: No, they have not considered further, at least they have not told me they considered further the withdrawal of those licenses. They are still in the position that they should not give wholesalers a license to sell Ethyl gasoline under their own trade name.

MAJOR LIPSETT: But because they have already been in existence there should be no recommendation for the withdrawal of them?

MR. MACKENZIE: They have not considered that further than what was said here.

MR. FRAWLEY: What is, should be.

The position is different with regard to refiners such as North Star and McColl Frontenac and other refiners with licenses to refine in a territory which is greater than the Province of Alberta. It is part of the standard refiner's contract that the refiner may sell to other refineries and Mr. Kaley at page 11763 in answer to Mr. Frawley's question says this:-

"I certainly cannot go along with you on your view- "point of the North Star, Mr. Frawley. I think that "generally speaking I would imagine that the layman on

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"the street in Alberta believes that the North Star
"is a refiner; I would think that. The people
"in the trade may know because they know that they
"buy and sell their products, but I would think that
"the North Star is thought of as a refiner. Now I
"do not think those two cases are comparable at all,
"I mean the Bell and the North Star, and we must,
"certainly would consider the North Star as a refiner
"regardless of where they operate. We have many cases
"among our refining licensees where they market their
"own products in one territory and buy and sell in
"others and from our point of view at any rate they
"are refiners and are entitled to the use of their
"own brands.

"Q BY MR. FRAWLEY: You have instances of that in
" the United States?

"A Oh, many, many more than you possibly have here."

Mr. Kaley also states that the jobbers are by no means agreed that it is best for them to have their own trade name. He states that in his experience many jobbers prefer to sell under the trade name of the refinery and take the advantage of the refinery's advertising.

Vol. 104, Page 11756.

I submit that there is no discrimination in the issue of jobbers' licenses.

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The next matter enumerated in the Programme of Inquiry is -

> The reasonableness or otherwise of the premium of $2\frac{1}{2}$¢ charged for Ethyl gasoline and a comparison with the premium charged in other parts of Canada and elsewhere.

In Vol. 104, page 11693 a list of the premiums in various towns in Canada and the United States is given, all of the points in Canada being in Imperial gallons and the United States points being given in United States gallons.

The Corporation has no control nor does it influence in any way the prices for treated gasoline charged by the refiner, the jobber or the retailer.

The premium charged for Ethyl gasoline varies slightly in different cities but is generally higher in the United States than it is in Canada.

The answer to this question is to be found in other parts of the evidence. There was no evidence given by Mr. Kaley other than ths list of the premiums charged at different points.

The last heading in the Programme of Inquiry is -

> Whether the effect of the licensing and other policies of the Corporation tends towards discrimination against refining in Alberta of leaded gasoline and promotes the importation of Montana refined products containing tetraethyl lead.

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The whole trend of the questions asked by Counsel for the Commission when Mr. Kaley was being examined, with regard to importation of leaded gasoline from Montana, tended towards showing that the policy of the Corporation in the United States resulted in giving to the Texas Company a monopoly of the importation of leaded gasoline and that if other refiners in the State of Montana had the same privileges as the Texas Company it might promote the importation of Montana refined products into Alberta.

It has not been the policy of the Corporation to issue licenses to United States refiners to export gasoline treated with fluid into Alberta. The only exceptions to this policy have been where United States refineries have affiliated or subsidiary companies in Canada through which the treated gasoline is sold. (Vol.104, P. 11694).

It may be taken, therefore, that in answer to the inquiry, as to whether the effect of the licensing policy of the Corporation tends towards discrimination against refining in Alberta of leaded gasoline and promotes the importation of Montana refined products, the policy of the Corporation tends towards denying the importation of Montana refined products.

The evidence of reasons which the Corporation has for its policy in not permitting leaded gasoline to be imported from the United States to Canada except from an American company which has a Canadian subsidiary is set out in Vol. 105 at Page 11779, and the following pages.

Mr. Kaley made it quite plain that this was done because the Corporation considered that it should be able to follow the product from the refinery to the consumer and its considered opinion was that it would not be able to do that if it adopted a policy of allowing other methods of importation from the United States to Canada. He also states that if any other American refinery set up in Canada a subsidiary which would give the protection which the Corporation considered it should have, a license to import into Canada would probably be given, and so in the net result there is no discrimination among the refiners in the United States because all of those refiners who wish to sell through jobbers in Canada may do so by setting up their own subsidiary company in Canada the same way the Texas Company has done.

The reply to that enquiry is that the policies of the Corporation do not tend towards discrimination against refining in Alberta and do not promote the importation of leaded products from Montana.

This finishes the various enquiries set out in the Programme of Enquiry but I also wish to refer briefly to the position of the Ethyl Gasoline Corporation in Canada and in the United States and Canada and I may repeat to some extent on the two main points, namely, jobbers' licenses and the importations from Montana.

The Corporation has a trade mark, the main part of which is the word Ethyl and this trade mark is used for Ethyl gasoline and the

Corporation considers that by the quality of the product sold as Ethyl gasoline it has built up a reputation for high quality gasoline and has acquired a goodwill which is of the greatest importance to the maintenance of its business. (Vol. 104, Page 11691).

It is true that there is no competition in Canada, or very little, from other high grade gasolines which do not contain leaded fluid but in the United States there is at least 20% of the gasoline sold which is in competition with leaded gasoline and of equal quality and the Corporation must, if it is to continue to hold its place in the market, maintain the goodwill which it has acquired.

Ethyl gasoline was the initial product of the Corporation which the Corporation has advocated, advertised and to some extent guaranteed to the public through its advertising. It has also set a minimum specification for Ethyl gasoline.

On the other hand the Corporation does not attach its trade mark to "Q" gasoline as there is no minimum specification, though there is is a maximum, so that there may be a spread between the quality of "Q" gasoline and the quality of Ethyl gasoline.

To sum up I would ask that this Commission consider the position of the Corporation not provincially but first, the position in Canada, and second, the position as a Corporation.

The Corporation operates under Canadian patents, and a patent is a monopoly, and having these patents and operating under

them must comply with the Patents Act of the Dominion. In deciding on the policy of the Corporation the Corporation considers that its policy should be Canadian, not Provincial, and any changes in the policy of the Corporation have to be regarded by it from the point of view of the Canadian position.

It is the policy of the Corporation as far as it can possibly do so to treat its business as continent wide and not to discriminate between different parts of Canada and the United States, and as far as possible to have the same uniformity about its contracts and conditions.

The Corporation has patents also in the United States of America and has a monopoly there but the picture which has been shown to this Commission is that of a Corporation which has two monopolies, one a monopoly of the fluid. With regard to this monopoly the Corporation has since its existence reduced the price of its product voluntarily eleven times so that though it started with a price of 1¢ per cubic centimeter it now charges only .26 of 1¢ per cubic centimeter.

The Corporation has also a monopoly in that it controls the manufacture of leaded gasoline. It has given licenses to every refinery in the Province of Alberta which requested such license to manufacture this patented product and no charge has been made for this license and no royalty charged on the patented product.

As already pointed out the Corporation has not cancelled any of its

refiners' licenses.

The Corporation also licenses its wholesalers for the purpose of controlling the sale of the product so that the Corporation may be able to follow the product from the refiner to the consumer, and has made no such charge for such license and has charged no royalty on the sale of the leaded gasoline by the jobber.

The only discriminatory practices suggested are those which it is said enable a company with a refiner's license to sell Ethyl gasoline under its own trade name though it in effect is a jobber when this privilege is denied to jobbers who never were refiners. The only reason suggested why the Corporation should extend this privilege to all jobbers is that the jobbers would get the benefit of the Corporation's advertising.

It is submitted that any change in the policy and operation of the Corporation for this purpose would not benefit the consuming public; it would not benefit the refiner but might give some slight benefit to the wholesaler. On the other hand the Corporation has stated that in its considered opinion it would not be wise to make this change and it is submitted that this Commission should not recommend any change against the advice of the Corporation when the change is not going to benefit the public but may be of detriment to the public; and is not going to benefit the refining industry but might benefit some wholesalers though there has been no evidence that any wholesaler desires the suggested change in operation.

The only evidence dealing with this suggestion other than the evidence of Mr. Kaley is that of Dr. Frey. He was invited by Mr. Frawley at Page 14518, Volume 130, of the evidence to suggest to this Commission that the Corporation's licensing regulations should be amended for the purpose of allowing jobbers to sell Ethyl gasoline under their own trade name.

This invitation was not accepted by Dr. Frey and if the same is being given to this Commission I would respectfully suggest to it that it be not accepted.

At page 14527 of the evidence Dr. Frey said that the Corporation takes the responsibility for the word Ethyl and that it owes it to the public, since the Corporation advertises to the public a particular kind of product, to police Ethyl.

I quote from Volume 130, Pages 14527 and 14528. I have not got this in my submission. But Dr. Frey there says this:-

MR. FRAWLEY: You have the pages but it is just the volume that is lacking?

THE CHAIRMAN: 14.....

MR. MACKENZIE: 527.

> "I say so far as brand names are concerned there is nothing improper about a gasoline being manufactured for one refinery and being sold by another."

That is all he said because that is done quite frequently here by the Union

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and McColl Frontenac, they have their gasoline manufactured by the Imperial and sell under their own name.

MR. FRAWLEY: And Canadian and lots of them?

MR. MacKENZIE: Yes.

"The Company that puts its label on the globe assumes the responsibility for the quality of the product and that responsibility runs through its entire sales organization, depending upon its integrity, so I have nothing to say on that score; it makes no difference to me whether Ethyl is made by the B.A., or the Imperial or whoever it happens to be made by, that is no concern of mine. The man that puts that label there is responsible for the top part of the label but he is not responsible for the word "Ethyl". The Ethyl Corporation takes the responsibility for the word Ethyl and I think they should."

I would say if they have to take responsibility for the word "Ethyl" then surely they must have a say in how that responsibility is going to be shouldered.

Dr. Frey goes on and he says:-

"They owe it to the public since they advertise to the public a particular kind of product and I feel it is their responsibility to police Ethyl. Now their

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"statement concerning dealing with refiners rather than jobbers has a considerable element of truth because refiners as a rule are larger than jobbers. But there are small refiners and large jobbers also. There are refiners who have no responsibility and I do not wonder that the Corporation might hesitate to have anything to do with a refiner that has no integrity. The same way I would not be at all surprised if the license extended to a jobber that they might be concerned with the integrity of the jobber but assuming that there are jobbers of integrity, and there must be, then I should say that the Ethyl Corporation, although it might have more trouble with the jobber than with the refiner, is not a particular reason, not a particular logical reason that I can see why it should apply to people operating a refinery name rather than a jobber name. Now I would say that the jobber is likely to give more trouble and the reason for that is this, that the refiner is producing a standard of gasoline specifically intended for blending with Ethyl. The jobber may have more difficulty in getting that same product and if he buys something that he expects to blend with Ethyl and the Ethyl Corporation says that it won't do, I can see that there is more likelihood of friction than with refiners."

Here let me say it seems to me that Dr. Frey is apparently referring to a jobber whom he thinks blends fluid with gasoline.

MR. FRAWLEY: As they probably do down there.

MR. MACKENZIE: Yes, as they do down there. That is why Dr.Frey gives his opinion that in certain circumstances, assuming all the things he assumes, that the jobber might have his own trade name. But here the jobbers are not blenders. They do not buy anything from the Corporation. They have no financial transactions with the Corporation whatsoever.

Now Dr. Frey goes on to say:

> "But as far as the name being fit only for refiners and not for jobbers I would say that if the technical requirements are met by the jobber that I can see no reason why he should not be able to use the word "Ethyl". "

Now at Page 14518, Mr. Frawley said to Dr. Frey:-

> "Q As to the licenses I take it from your evidence, it is your view that this Commission should recommend that the licensing regulations be amended accordingly?"

He was referring there to the licensing regulations which prevented jobbers from selling gasoline under their own trade name. And Dr. Frey's reply was:-

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"It is a matter of business policy with the Ethyl Corporation. I do not know whether this Inquiry amounts to the same as a judicial finding or not; the question of a binding contract is a subject that the Ethyl Corporation has had to deal with in the United States to injunctional proceedings of the Department of Justice within the past two years. I will have to admit that I am not thoroughly familiar with those but I simply give a general opinion that with equal quantities of equal quality gasoline, a gasoline that will serve the purpose and that sells of a type that will seek a fresh product before the public, that it does not seem to me that there is any distinction between whether the blender is a refiner or whether the blender is a jobber or a person of some other name."

So that apparently he is referring there to a jobber who is a blender. And at Page 14,532, in answer to my question. I asked Dr, Frey:-

"Q But if the Ethyl Corporation thinks that it would rather have it the other way there is no particular harm done to anyone. That the jobber is selling the Ethyl gasoline but it is sold under the name of the refiner?

"A The only harm done, if it is harm, is that the jobber who cannot use the Ethyl name might be deprived of just that much

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"advertising value from Ethyl. That is the only thing I can see."

MR. COMMISSIONER LIPSETT: What would happen, Mr. MacKenzie, if you gave a licence to a refiner and he ceases refining. Does he still hold the licence?

MR. MACKENZIE: That is what has happened so far. He still holds his licence and he sells under his own trade name a product made by another refiner.

MR. COMMISSIONER LIPSETT: Is there anything to prevent him selling that? When he goes out of business is there anything then to prevent from selling that trade name of yours to any little tinpot refiner and that man continuing to use it, under your present system?

MR. MACKENZIE: What Mr. Kaley says is as long as they retain their legal entity that they have not discontinued the use of the licence. These matters, I think, from what he said, have never come up. They do not know what we will do. But so far we have not cancelled any licences in Alberta, and the ones referred to are the only refiners who have gone out of business and who are continuing marketing, the Maple Leaf and the Bell. He says maybe we should cancel but we have not done it yet.

MR. COMMISSIONER LIPSETT: The logical position would rather seem to be that either a man at the present time is entitled to a licence or not under your scheme?

MR. MACKENZIE: You mean if he stops refining he should have his licence withdrawn?

MR. COMMISSIONER LIPSETT: That would seem to be the logical result of your policy of not giving licences to jobbers merely.

D. G. MacKenzie, K.C.

MR. MACKENZIE: Well that is the situation, and as I say the only questions that have come up are with regard to these particular refineries, the Bell and Maple Leaf.

MR. COMMISSIONER LIPSETT: I suppose the practice has gone on because it never has been questioned? It was never considered.

MR. MACKENZIE: Yes, nobody objected. Now I go on with the submission.

Why should the Corporation be asked to change its regulations which are uniform throughout Canada when the only reason given for the proposed change is to give to one or two jobbers in the Province of Alberta the benefit of the Corporation's advertising which advertising the jobbers have not contributed to?

And I say this particularly when the evidence of Dr. Frey is that the Corporation must take the responsibility and the evidence of Mr. Kaley is that in the considered opinion of the Corporation a change such as that proposed might lead to a less satisfactory product reaching the public.

I am sure the Commission will not recommend a change which is not for the benefit of the public and the result of which may be a detriment to the public.

The next matter in the United States and Canadian picture is that of the importation of leaded products from the United States.

The enquiry in the Programme of the Commission is -

D. G. MacKenzie, K.C.

Whether the effect of the licensing and other policies of the Corporation tends towards discrimination against the refining in Alberta of leaded gasoline and promotes the importation of Montana refined products containing tetra-ethyl lead.

We have heard of a man named McNeill who went all the way from Edmonton to Great Falls, Montana, at least 600 miles, a round trip of 1200 miles by the time he got back to Edmonton, and he went this long journey for the purpose of buying a tank load of Montana leaded gasoline. He found that the licensing policy of the Corporation did not tend towards discrimination against refining in Alberta of leaded gasoline and did not promote the importation of Montana leaded gasoline because, we are told, he was not able to buy any.

That, I think is a good answer to the sixth question in the Programme of Enquiry but the questions asked Mr. Kaley in his examination rather suggested that there should be more importations from Montana and that the policy of the Corporation was discriminatory against refiners in Montana other than the Texas Company, in fact that the policies of the Corporation gave to the Texas Company a monopoly; that this should not continue and that all refiners in Montana and maybe in the United States should be enabled to import into Canada.

Here I might bring to the attention of the Commission Section 65 2(b) of The Patent Act, Chapter 32 of the Statutes of Canada, 1935 -

D. G. MacKenzie, K.C.

"The Attorney General of Canada or any person interested may at any time after the expiration of three years from the date of the granting of a patent apply to the Commissioner alleging in the case of that patent that there has been an abuse of the exclusive rights thereunder and asking for relief under this Act. The exclusive rights under a patent shall be deemed to have been abused in any of the following circumstances:"

Then there is a long list of them and (b) is this:-

"(b) If the working of the invention within Canada on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by the patentee or persons claiming under him or by persons directly or indirectly purchasing from him or by other persons against whom the patentee is not taking or has not taken any proceedings by infringement.

The suggestion that the policy of the Corporation should be changed so as to enable other refiners in Montana and in the United States to import leaded products into Canada means a change in the United States policy of the Corporation not confined to Montana, and the Commission, I am sure, will not suggest that the Corporation should change its policy with regard to the United States for the purpose of increasing the importation of leaded gasoline into Canada and to Alberta if it is to be of no advantage to the consumer or to the refiner in Canada and in Alberta.

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The evidence before this Commission has been that with the keen competition in the industry on the North American continent the price at which the consumer is enabled to obtain refined products is a fair and proper price. If this is so there would be no advantage to the consumer in Alberta to have further importations of the refined product and there would be no advantage to the refineries in Alberta by such a change in the policy of the Corporation.

And the Corporation might be proceeded against under The Patent Act.

The Corporation, however, bases this particular part of its policy on its responsibility to the public that the public will get the product which the Corporation advertises and its present policy is so that it may follow the product from the refiner to the consumer.

In conclusion I would say that a Corporation which has a monopoly by way of patent and which voluntarily reduced its prices as this Corporation has, a corporation which in this Province has given licenses to every company, refiner or jobber which has asked for a licence, which gives these licenses without payment and without charge by way of royalty, is one whose business record is worthy of commendation.

This submission is by the nature of the Corporation's business, one which might be termed personal if a Company's business might be termed personal, and is not one dealing with the larger problems of marketing which problems the Commission has been mostly concerned with.

D. G. MacKenzie, K.C.

This Corporation has put before you for your consideration the whole of its policies and methods of doing business and leaves the matter with you confident that you will appreciate its efforts to carry on its business as a whole with the object of keeping the goodwill of the consumers and of the persons and companies in the oil refining business and it should not be asked to change its policy when it says the proposed change may affect the quality of its products and will not benefit the consumer.

MR. COMMISSIONER LIPSETT: Mr. MacKenzie, there are one or two other matters that the Corporation said they would look into and make further statement on. One that occurs to me from memory is the reference to smaller containers.

MR. MACKENZIE: Smaller drums?

MR. COMMISSIONER LIPSETT: Yes.

MR. MACKENZIE: They wrote to me and they said they were considering it, but having looked over the list of refineries in Alberta and the West, they rather came to the conclusion that it would not be to the advantage of any refinery to have the smaller drums. The refinereies which are listed, I do not think any have a capacity of less than 500 barrels a day, and I am told that economically it is not wise to mix a batch of oil which will be on your premises for more than one week or ten days. That it is not the practice of refiners to mix oftener than that. If that is so I understand with that large drum they would not make a batch that would be more than 10 days' or two weeks' requirements. And they wondered whether there was any

demand for the smaller drums. Since then, of course, the war has started and the price of steel has gone up. The demand for aviation gasoline has gone up, or rather aviation fluid, and that is the only use they have for the small drums. I do not wish you to think that the matter is closed. They are considering it. If there is any demand at all from the small refineries for it they will be glad to do what they can about it. But their present information is that the small refineries do not want the smaller drums.

MR. FRAWLEY: It has been a long time now since Mr. Plotkins made formal demand on them for the 25 gallon drums.

MR.MACKENZIE: He does not want it now.

MR. FRAWLEY: Perhaps not, but some other Plotkins around the corner may.

MR.MACKENZIE: When he comes along we will consider it.

MR. FRAWLEY: All right, that is fine.

MR. COMMISSIONER LIPSETT: Is there anything else at all, Mr. MacKenzie.

MR. MACKENZIE: I do not remember of anything else that was left to consider.

MR. COMMISSIONER LIPSETT: I just could not remember.

THE CHAIRMAN: What is your position in the United States in connection with the alleged breach of the Anti-Trust Laws.

MR. MACKENZIE: The question there was that there was an injunction restraining us from, in the refiners' licenses, requiring the refiner to sell to our licensed jobbers; that was they said, against the Sherman Anti-Trust Law; that if we agreed, as I understood the judgment, if we agreed, if we sat around the table with our refiner and agreed on who his jobbers would be that is all right but so long as in our contract we say "You will only sell to these jobbers that we name", then that is something which we cannot do according to the Anti-Trust Law.

MR. FRAWLEY: That is the same policy here.

MR. MACKENZIE: I do not know, but that was a judgment of a single judge which has been appealed and that is the way it stands. The injunction is not being put into effect until the appeal has been heard.

THE CHAIRMAN: Has the appeal been heard, the first appeal.

MR. MACKENZIE: I have not been informed that it has anyway. It had not been when they were here and I do not think it has been since.

THE CHAIRMAN: I thought I saw in some magazine recently that it had.

MR. MACKENZIE: That is not the action against the Corporation for $750,000,000, for infringement of patents.

THE CHAIRMAN: I do not think so.

MR. MACKENZIE: There was an action reported in the papers.

THE CHAIRMAN: Oh no, well all right.

MR. FRAWLEY: I thought perhaps Mr. MacKenzie could tell us, Mr. Chairman, I thought that the refiner's license contained a similar provision here and I thought Mr. Kaley told us that that was the uniform license.

MR. MACKENZIE: That is right. I thought you were referring to the law.

MR. FRAWLEY: Oh I see, oh no.

MR. MACKENZIE: Oh yes, that is here.

THE CHAIRMAN: All right, Mr. Frawley, who is next.

MR. FRAWLEY: Mr. Plotkins.

THE CHAIRMAN: We till take five minutes' recess and I would like to see you, Mr. Frawley.

(A recess of five minutes was here taken)

THE CHAIRMAN: All right, Mr. Plotkins.

MR. PLOTKINS: Mr. Chairman and Mr. Commissioner, I have written part of my submission but I will make several remarks during the course of reading it and therefore I did not think it would be of much value if I submitted a copy to the Commission.

Mr. Chairman and Mr. Commissioner, it seems a long way back to November 24th, 1938, the official birth date of the Royal Commission of

Inquiry into the Alberta Oil Industry.

The inquiry has covered a long period of time.

THE CHAIRMAN: That is one thing the Commission will be agreed with you about.

MR. PLOTKINS: And from the start the Commission earnestly and unsparingly went to work to get at the facts. I wish now to thank and pay tribute to the Chairman, Honorable Mr. Justice A. A. McGillivray, for unending patience and labors in searching for the true facts and their relative positions in the industry, and for his sympathetic understanding of the problems and relations besetting the labors of both the large and small companies. I want to remark that at various times during these hearings that I was astonished at the ability of the Chairman to cut unerringly through a maze of expert and contradictory evidence on complicated and technical subjects and clearly discern the core of the subject, and bring it to light in its true perspective. I am satisfied, Mr. Chairman, that your labors will result in a report that will do justice to all our citizens and our country.

I also want to commend Major L. R. Lipsett for his labors, patience and understanding in bringing out the facts concerning the industry, and I am sure that his contribution to the final report of the Commission will do justice to his sentiments towards the general public and the small man in the industry.

I must not forget the Commission Counsel, who certainly did work hard to assist everyone in performing their duties, and it is my pleasant duty to thank him publicly for his help to me in presenting our views to the Commission. My only regret is that it has been so hard for him to assimilate the technical and economic factors that govern the industry, and this has, in my opinion, increased his labors manyfold, and I want to express the hope that, as he has in the past been the bridge between the industry and the authorities in Alberta, the Commission's report will give him a more accurate appreciation of the respective rights and duties of the authorities and the industry.

MR. FRAWLEY: Unless of course he stopped being the bridge.

MR. PLOTKINS: Well I hope that your time and labors will not be wasted and we will get the benefit of them as the years go by.

A great deal has been said about the waste of public funds in the expense incurred by the labors of this Commission. I personally feel that this is a mistaken attitude, as it overlooks the fact that the long labors of both the Commission and the industry have resulted in bringing out facts and information for both the Government and the industry that will form the basis for further scientific research in the quest for progress for social economic and technical betterment, and human experience teaches us that, as science is simply the orderly arrangement of facts whose lessons pay dividends out of proportion to the expense involved,

it is my opinion that the labors of this Commission to the public will result in ultimate greater benefits than the cost to the Government.

It must also be pointed out that while the Government has incurred costs, the industry as a whole has contributed, in my estimation, about three quarters of the total expense.

Now getting back, a great mass of evidence has been presented covering every phase of the industry, it being said one of the most exhaustive investigations into an industry ever attempted. Of necessity a great deal of what has been presented, even by experts, is contradictory, and it is naturally for the Commission to glean from it, the necessary facts to enable them to carry out the purpose of their commission.

Often during the course of this inquiry discussions arose covering some one particular aspect of the subject under consideration, and due to the conflicting viewpoints this sometimes led to implications which, though possibly true in dealing with that particular matter only, was seen in a different light when considered in its proper phase.

Unfortunately, due to the war, the labors of the commission, the counsels, and the time and energy given by the industry in general, and its many economic experts in particular, has lost a considerable amount of value as the industry in Canada, and in Alberta, will now form part of a war economy, as distinctive from a competitive one, with all it implies. I feel it is my prime duty to assist the Canadian Govern-

ment and the other units of Government and industry to fulfil their part towards the successful conclusion of the Empire's, and its Allies', great effort, and consequently I now feel that it is wise and desirable for me to relegate to the background our private interests and co-operate with the Dominion and Provincial Governments, and with the other units of the Industry, to this end.

For the above reasons, and the further fact that the Commission has been instrumental in aiding our companies in obtaining a solution to many of our grievances; for example,

The reduction in pipeline charges,

The equitable adjustment in the rate of Dominion Sales Tax paid by our company.

A direct connection from the main pipe-line into our Refinery.

I might stop there and say that after prolonged requests to the Public Utilities Board of Alberta an order was given to us or an order was made directing the Valley Pipeline, the new Valley Pipeline, to make a connection into our refining plant and I approached the officials of that company and asked them to pursue the matter and get the line in before the fro t; to date nothing has been done. I just draw it to your attention because I think we are entitled to action and it means if we do not get the line in this Fall we will be subject to expense and delay next Spring and all this Winter, to a further 36 or 40 dollars a day which is something for a small company like ours.

THE CHAIRMAN: You say an order was made.

MR. PLOTKINS: An order was made some month or two ago, I do not know exactly the date, but it is quite a little while ago.

MR. FRAWLEY: Did the order contain any provision as to the time when it should be carried out.

MR. PLOTKINS: No, but the Chairman of the Commission expressed a wish to the respresentatives of the company that they should proceed immediately.

MAJOR LIPSETT: What is the position at the present time, Mr. Plotkins, what are you paying for your connections.

MR. PLOTKINS: We pay the regular pipeline charges, 9½ cents into the terminal and we pay a further 6 cents from the terminal of the pipeline to our refinery.

MAJOR LIPSETT: Is that 6 cents being charged you.

MR. PLOTKINS: We pay it every month, oh yes, we have to pay it to the Imperial Oil.

THE CHAIRMAN: Have you pointed out to the Public Utilities Board that their order is not being carried out.

MR. PLOTKINS: I have not.

THE CHAIRMAN: It is not in our hands but it is strange that a Public Utilities Board would not see that its orders are obeyed.

MR. PLOTKINS: I have to admit that I did not, but I contacted the company several times and Mr. Coultis assured me they would do something very quick, but nothing has been done and probably that is my best course, is to approach the Public Utilites Commission and

point out that fact.

MAJOR LIPSETT: You are being charged right down until today for that service.

MR. PLOTKINS: They have no alternative so long as the line is not in and they charge 6 cents for the service.

The better understanding of the mutual problems of the various operating companies.

The obtaining of a License from the Ethyl Gasoline Corporation.

MAJOR LIPSETT: Have you a copy of that order, Mr. Plotkins.

MR. PLOTKINS: Have I a copy with me.

MAJOR LIPSETT: Yes.

MR. PLOTKINS: No, I have not with me but we have a copy at the office.

MAJOR LIPSETT: It would be interesting to see the order of the Utilities Board.

MR. PLOTKINS: I will bring it up this afternoon.

All of which benefits similarly effect other independent companies, and I do not therefore propose to deal with these phases any further.

I intend to sum up our position on the various subjects under consideration by this Commission, on which I feel competent to speak, in the order of the programme of inquiry.

PART ONE--CRUDE PETROLEUM:

A. PRODUCTION IN ALBERTA

Cost: Considerable evidence has been submitted in

an endeavor to ascertain the cost of crude oil in Turner Valley, and it is my submission that the Royalite operating records which discloses the production cost to be about 72¢ to 75¢ per barrel, can be taken as a fair estimate of the Royalite's cost of production. Their determination of costs is based on, recognized methods, governed by practical considerations, and while it may be true in theory that it is impossible to ascertain the true costs owing to the many arbitraries, yet on a practical cost accounting basis arbitraries are always assumed, and being the result of sound judgment and experience they can safely be taken as reflecting the correct cost of producing crude oil by the Company.

Of course it would be unwise to measure the cost of producing crude oil by other companies and independents in the light of the Royalite's records as due to their better technical organization, greater experience and capital, everything else being equal, they would produce at less cost than others.

Price:

Field Price (a)

The evidence has shown that the field price is the result of competitive conditions between Turner Valley crude and other crude fields. Not only in the matter of price in Turner Valley does competition assert itself, but what determines the price and volume in the final analysis is the delivered price to the refinery, wherever located. Evidence has also disclosed that there are many factors that are taken into account in determining the price to be paid in the field, and these factors, are in the main, forced upon the in-

dustry as a whole so as to keep in balance the field price at a competitive figure with other crudes, and, at the same time, safeguard the general interests of the industry and make for restriction or development as conditionswarrant.

With a Conservation Board in existence that so far has effectively restricted production to effective demand, the field price, is the result, in a large measure, of outside competitive factors.

The evidence, I believe, has clearly brought out that production economy, in its commercial application, is not based, except ultimately, on a fair return upon capital properly invested, but is largely carried on, so far as independents are concerned on a speculative basis, and while this is not true of the operations of the major companies owing to their more scientific approach to the various problems, yet. as long as we accept the dogma of competitive prices for crude, between fields, the question of price, profit or losses is not amenable to Government regulation if the best interests of the public are to be served.

Evidence has been introduced to show that a large proportion of the potential oil lands of the three Western Provinces is under the control of the Standard Oil of New Jersey and its subsidiaries, and whether it is desirable that such a condition should exist is a matter that should be considered by the Commission.

In respect to the policy adopted by the Conservation Board I submit that the evidence shows that they do not take into consideration

equities and economics and the result will be, if not corrected, to concentrate the production of crude oil and gas more and more into fewer hands.

MR. PLOTKINS: I wish to, at this time, give the Commission, I have a pamphlet here somewhere on that subject of conservation and prices and so forth. I have here a record, a verbatim record of the proceedings of the Temporary National Economic Committee, and I think it is pertinent to the argument, that the views of two of the witnesses should be brought to the attention of this Commission.

THE CHAIRMAN: What are you reading from.

MR. PLOTKINS: It is, well it is published by the Bureau of National Affairs Incorporated in Washington, D. C., and it purports to be a verbatim record of the proceedings of the Temporary National Economic Committee which is now in session as I understand it in Washington delving into the oil business.

THE CHAIRMAN: The date of that magazine.

MR. PLOTKINS: It is dated September 29th, 1939, it is Volume 6, No. 5. I do not know whether I should read it all. Maybe possibly the best way would be to leave the book with the Commission.

THE CHAIRMAN: If you leave the magazine with us we will feel free to look at it as we would to any other book, not treating it as evidence but as a book of general information.

MR. PLOTKINS: Very well, sir. It is the testimony of Louis J. Walsh, Vice-President, Eastern States Petroleum Company, Incorporated.

Mr. Walsh says:

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"I am a graduate Mechanical Engineer. My first "oil experience was with the Prudential Oil "Company in Baltimore in 1915, and I became as- "sociated with the Beacon Oil Company in Boston, Massachu- "setts in 1919, becoming Executive Vice-President "of that company in 1925 and continuing in that "position until 1931.

" In 1932 I assisted in the "formation of the Eastern States Petroleum Company "and became a Vice-President of that company at "that time and have been a Vice-President since "that time.

" The Eastern States Pet- "roleum Company was organized early in 1932 by my- "self and three associates. Mr. Kahle, the "President of the Company, has had a long and varied "experience in the oil business and was with the "Standard Oil of New Jersey for a number of years. "In 1932 he became President of the Louisiana Oil "Corporation and in 1926 he became President of the "Beacon Oil Company. He continued in that position "until about 1931 and came back with the Standard of "New Jersey, and in 1932 he joined us in the for- "mation of the Eastern States Petroleum Company. "The other two associates of the company, Mr. "McCarthy and Mr. Armstrong, have had similar long "and varied experience in the oil business, not only "with major companies but with independent companies.

" We formed this company, each "of the four associates having an equal share of the "capital stock of the company.

MR. PLOTKINS: I think it is wise to read this preamble so as to give you a picture of the men's experience and such like, that you may weigh it.

We formed this company, "each of the four associates, having an equal share "of the capital stock of the company and it has "continued that way until this time. It was en-"tirely a personal enterprise.

I presume a member of the committee then asked:

"What size was the Company, the capital."

And Mr. Walsh answered:

"The original capitalization was $75,000 and has "not been changed."

"MR. AVILDSES: What is the net worth to-"day, approximately.

"MR. WALSH: I would say approximately "a half million dollars.

" In 1928 to 1930 all the in-"dependent refineries on the East Coast have been "Purchased by major interests. For example, the "Beacon Oil Company that Mr. Kahle and I were assoc-"iated with was purchased by the Standard Oil "Company of New Jersey. The Massachussetts Oil "Refining Company was purchased by the Cities Service "Company. The New England Oil Refining Company at "Fall River, Massachussetts, was purchased by the "Shell Interests. The Prudential Oil Corporation "of Baltimore was purchased by the Continental Oil

"Corporation. The Warner-Quinlan Company of New
"York was purchased by the Cities Service Company.
"At that time there were no independent refiners
"left on the East Coast or the Gulf Coast East
"of New Orleans. In 1932 there was a large surplus
"of gasoline and other petroleum products in the
"East Texas Field. There was a surplus of tank
"steamers. There was a largernumber of independent
"marketers along the Atlantic sea-board who had
"no independent refinery source of supply. It
"was our plan in forming the company to take East
"Texas as our sourse of supply and ship the products
"by rail to Houston or any Gulf port, and ship by
"tank steamer from Houston to the Atlantic sea-
"board and market the products to independent refiners
"in this area."

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" This program was successful and we did very well.

" In 1933 the major oil companies organized what is commonly known as the tank steamer pool. The purpose of the pool was for each member of the pool to put in a certain percentage of their ships. They were to reserve 84 per cent of the ships required to carry their own material, the balance of 16 per cent to be put into the pool. These ships had been operating along at cost and charter rates of 14 to 18 cents per barrel. Under the pool plan, the major companies reserving 84 per cent of their own ships at the 14 to 18 cent rate, would practically go along on the same basis as they had been going, by putting 16 per cent of the tonnage into the pool. An independent operator wanting tonnage would have to go to the pool and charter ships from them. The charter rate proposed was 42 cents per barrel. This high rate was to pay the members of the pool for ships that from time to time they had to lay up.

The net result of the whole thing was that an independent requiring ships could go to the pool and, by paying 42 cents per barrel, could have products moved from the Gulf Coast to the Atlantic Seaboard. The major company moving products from the same point to the Atlantic Seaboard, on 84 per cent of his business his cost would be 14 to 18 cents. On the remaining 16 per cent his cost would be 42 cents, so that his average cost would be about 21 cents as compared with 42 cents to the company that was not a member of the pool."

At this point I wish to comment that the process of curbing independent competition is in principle the same, whether it applies to ships, gasoline or

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to anything; that the process that was devised by Mr. Rockefeller at the inception of the industry, is to get the average market at a lower cost to themselves and force the competitor to pay more, or to get less, whichever is applicable or possible at the time. We have the same principle operating in the form of transportation on ships. I will come to that when I read my brief on Marketing and show the effect of the similar policy as it applies to Alberta.

"We, of course, protested, and a number of other people protested. Thanks to the Department of Justice, that pool was never put into effect. It didn't die there, however. It was revived some time later and under the N. R. A. it very nearly became a law. However, it isn't. We, of course, continued our marketing business on the East Coast.

"The N. R. A. came along. Among other things the Petroleum Administration Board decreed that all commercial consumer contracts should be cancelled. At that time we had a number of large commercial consumer contracts, particularly in the New York City area. For example, we supplied Third Avenue Railway, one of the biggest buyers of gasoline in the city. We at times supplied the B. M. T., who of course operated a very large bus fleet in New York and Brooklyn. The Petroleum Administration Board by decree cancelled all these contracts.

In about three months as the result of the operations of the Petroleum Administration Board under the N. R. A., we lost about 50 per cent of our business. Decrees came out so thick and fast to the Board that it was impossible to keep up with the decrees and the interpretations. A decree would come out one day and two

days later it would be cancelled or amended or changed.

"That went along all during 1934. About the middle of 1934 the Petroleum Administration Board organized what was known as the East Texas buying pool. The theory of that was for about 29 major companies to buy not less than 3 per cent of their requirements in East Texas, at prices above the then going price. They did this and in a period of about two weeks the price of gasoline in East Texas went from 3½ cents a gallon to 4¼ cents a gallon.

"PRICE RISE IN EAST TEXAS."

"With this raise in the price of East Texas there was no corresponding change in prices along the Atlantic Seaboard. They stayed exactly the same as they were. This condition continued for quite some time. The buying pool, the original buying pool, was succeeded by, I believe, three others, two of which actually went into effect and were operated, and two never did come up. The last buying pool was formed in 1935, after the N. R. A. was declared invalid. The jury at Madison so found and so convicted a number of the members of this so-called buying pool.

The buying pool, so far as we were concerned, only had one effect. It put us out of business. We were confronted with a fixed selling price in New York City and the Eastern Seaboard, no change there whatever. On the other hand, at our source of supply, prices had been substantially increased through the operation of these different buying pools.

It was necessary for us to change

our whole plan of operation, which we did. We were forced into so-called partial integration. We decided that we had to go ahead and manufacture our own products. We checked the whole situation over and decided that we would build our refinery at Houston. We chose Houston because Houston was at that time, and still is, the greatest single refining centre in the world, both from the number of refiners and the barrels of crude handled every day. Houston is also an excellent refiner centre because of its transportation facilities. From Houston you can compete with world markets any place.

In 1935 we went ahead and spent about eight or nine hundred thousand dollars and built our refinery at Houston. We built the best plant we could build. It was modern, as up to date as anything we knew of at that time. Our plant there has a capacity of 15,000 barrels per day, of which 10,000 barrels is cracking capacity, the remaining five being topping capacity."

MR. COMMISSIONER LIPSETT: How much was the cost of that plant for 15,000 barrels?

MR. PLOTKINS: Eight hundred thousand to nine hundred thousand dollars. That is for the most modern plant, starting from scratch, tankage and everything else.

MR. FRAWLEY: Well, does he say that?

MR. PLOTKINS: I am assuming they had nothing. They went to Houston and located a site and built a plant. Of course, I have no evidence that that is correct.

"The price of the East Texas crude, which is the barometer of the entire industry on account of the size of the field, as been posted at $1.00 since some

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time in 1933. With East Texas crude at $1.00, and pipe line transportation which we bought from other companies, from major companies, we could with a modern plant refine the crude oil at Houston, ship the products to the East Coast, or export them and compete with the major companies and make a reasonable profit. This situation continued during 1935, 1936 and through part of 1937.

"When we built our plant, proration was in effect in Texas and to some extent in Oklahoma and California. Proration from that time on became more and more stringent. The allowables in different fields were reduced. The allowables on wells in those fields were reduced time after time. Then the Sunday shutdown came, then the Saturday and Sunday shutdown, and here a short time back the complete 15-day shutdown."

I want to stress that because this man is painting a picture of the competitive situation as it exists for him in that field and when proration started to affect prices, he was able to forget about the American crude and buy Mexican crude. Here we are not in that position. So I think that you will find that this, while it takes a little while to read, it will certainly paint a proper picture for us to consider here.

THE CHAIRMAN: I was just wondering, Mr. Plotkins, if, to save your time as much as anybody's, if you could not give us your own summary of what this contains and leave the magazine with us. I mean your own summary will make your point for your argument purposes. The exact language of the witness we would have if you leave the article. If that would suit your purposes just as well.

MR. PLOTKINS: I think I am not able to express

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as accurately as this witness the opinion that he has given to this Committee. But I think I will skip some of it and go to the core of the question of pro-ration.

THE CHAIRMAN: Whichever way you think best.

MR. PLOTKINS: I will finish this paragraph.

"The effect as far as we were concerned of pro-ration over those years was a reducing of the supply while at the same time the demand was increasing. We had no particular objection to that."

The effect is what we must look at as to the result of legislation, not what is intended, We in the oil business, at least myself in the oil business . It may be that the Legislature and the public officials may have very good reasons for recommending certain legislation. They may have a proper appreciation of the abuses or maladjustments that they wish to correct. But, after all, I can only judge the legislation on its effect on me and in what position it puts me in relation to some other competitor. And when we say the word "effect" I think it should be well to consider that after all that is what counts in respect to the legislation that is in force in this Province or any contemplated legislation.

"DOMESTIC CRUDE PRICES."

"During this period the price of crude started going up. In late 1936 it went from $1.00 to $1.10, and then in 1937 it went from $1.10 to $1.27, and later it advanced to $1.35."

During the course of this Commission evidence was given to show that as the pro-ration

laws extended over the United States prices went up. They went up and they stayed up until the prices in the United States were higher than the general world level of prices and when that took place showly it took approximately a year or a year and a half for the foreign crude prices to force prices down in the United States.

"While crude was advancing, the prices on the Atlantic Seaboard stayed substantially the same. Export prices were the same.

"The chart I have made here, I believe, shows that situation quite clearly."

I will skip a lot of these other matters that are very vital in understanding this man's remarks on Conservation and Price Fixing, but at the same time they are quite lengthy and I think it would be better for me to pass them over for the present.

"CONSERVATION AND PRICE FIXING."

"MR. WALSH: I believe that conservation is strictly an engineering matter. I am entirely in favour of it. Conservation through engineering has certainly improved the operations of oil producing properties. It unquestionably reduced operating costs and over a period will undoubtedly increase the recoverable oil from whatever field it happens to be in. Conservation is good for the individual well owner, it is good for the industry and it is good for the country as a whole.

"I do believe, however, when you you try to tie conservation into price fixing and then call the combination of the two pro-ration, that it is not a good thing. I think that pro-ration as it has been administered has not been a good thing for the industry.

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"I think that conservation is certainly a good thing for the industry.

"MR. SNYDER: Do you believe that some of the practices used in pro-ration are carried to extremes in attempting to achieve the conservation principle?

"MR. WALSH: Yes, I do. The best example of that, of course, is the biggest field in the world, the East Texas field. I think that the allowables under pro-ration as compared with the potentials for that field are ridiculous, if you try to tie them in with engineering."

That is the position that we will attain in Turner Valley if we continue to drill and the market does not expand, except the normal increase that we can expect. We will reach allowables which will defeat the principle of conservation because we won't utilize the energy properly; we will have economic waste and all other matters that have been pointed out to the Commission.

"MR. SNYDER. What do you think about the use of chokes in the flow w line of the well? Do you think that is good engineering?

"MR. WALSH. I am thoroughly in favour of that. I think it is good engineering.

"MR. SNYDER. Do you have any ideas as to the size choke that may be used? Do you think there is a limit to the size used?

"MR. WALSH: Oh yes, there certainly is. I believe each field, each well as a matter of fact, under best engineering practice, should be produced using a certain choke and producing a certain amount per day. I don't believe that you can arbitrarily set up an allowable

"per day and then work backwards to the choke necessary to restrict production to that amount.

"MR. SNYDER. Do you think conservation should be carried on with practices pertaining to each particular well rather than to the whole field or area on a uniform basis? Is that possible?

"MR. WALSH: Yes, I believe that can be done.

"MR. SNYDER: What adverse effect, if any, has extreme pro-ration had upon the independent refiner?

"MR. WALSH. Will you repeat the question, please?"

(The Reporter read the question.)

"MR. WALSH. It has restricted his source of supply."

THE CHAIRMAN: Well, we will rise now, Mr. Plotkins.

(At this stage the Hearing was adjourned until 2:00 P. M.)

.....

2.00 P. M. Session

THE CHAIRMAN: Sorry to keep you, Mr. Plotkins, but we have to have these conferences from time to time.

MR. PLOTKINS: Quite all right, Mr. Chairman. Well, Mr. Chairman, I have brought the Order of the Board of Public Utility Commissioners with respect to this pipe-line matter, it is dated ----

MR. FRAWLEY: It is dated Friday, the 13th of October, 1939, that is a bad day, Mr. Plotkins.

MR. PLOTKINS: That is probably the reason.

MR. FRAWLEY: If you would like to know about the order perhaps I had better read it.

THE CHAIRMAN: I do not suppose it is a matter that we have a thing to say about.

MR. PLOTKINS: No, I am just pointing that out. I do not wish the Commission to do anything about it. It just merely states they have heard our side and heard the Company's side and ordered the pipe-line to be built.

MR. FRAWLEY: Perhaps I can get the working part of it.

THE CHAIRMAN: Yes, we would just like to know if it is mandatory.

MR. FRAWLEY: You see it is like a lot of the orders of this Board, they are in the form of judgments as you see, reciting:

> " This application was heard in "Calgary on August 24th, last. Mr. Plotkins, Manager "of the applicant Company, appeared on its behalf and "Mr. H. G. Nolan, K. C., appeared for Valley Pipe Line "Company, Limited, hereinafter referred to as "The Pipe "Line Company.' At the time of the application, the

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"operation of the Pipe Line in question was still
"being carried on in part by Royalite Oil Company
"Limited and in part by Imperial Oil Limited but
"Valley Pipe Line Company Limited has since taken
"over the pipe line assets of those companies and is
"now operating the pipe line formerly operated by
"the two aforementioned companies. Valley Pipe Line
"Company Limited, is by virtue of the provisions of
"'The Pipe Line Regulation Act,' a public utility.
" The question of a connection
"from the Pipe Line Company's trunk line to Lion Refinery
"was discussed at some length by the Commission appointed
"to enquire into matters connected with petroleum and
"petroleum products and consisting of The Honourable
"Mr. Justice McGillivray and Mr. L. B. Lipsett, in the
"Commission's report re pipe line matters. In that
"report the Commission recommended that a connection
"be made from the Pipe Line Company's trunk line to the
"Lion Refinery upon certain conditions. The Commission,
"however, expressed itself as desirous of in no way
"tying the hands of this Board when it came to dealing
"with these pipe line matters once they came under the
"jurisdiction of The Public Utilities Commission.
" It is to be noted that in arriving
"at the transportation rate, that Commission made an
"allowance of some $69,500.00 for the purpose of capital
"expenditure and which allowance was not included in the
"rate-base but was treated as an operating expense. The
"Board believes that such expenditure as that involved
"in the construction of the pipe line connection now in

"question is intended to be provided for in this
"allowance.

" It may be said that this Board
"fully agrees with the Commission's recommendation that
"the connection mentioned should be made. The only
"difficulty that arises in that regard is as to what
"limitations or conditions should be attached to any
"order that the Board may issue when ordering such
"connection to be made. By reason of the possibility
"of winter setting in in the very near future, it is
"advisable that the construction of the connecting line
"should be proceeded with at the earliest possible moment,
"and for that reason the Board will leave in abeyance
"certain questions which were raised at the hearing,
"by Mr. Nolan on behalf of the Pipe Line Company. Thus
"it has left in abeyance the question as to whether the
"Pipe Line Company should bear the expense of the pipe
"line to the Refinery's tanks, instead of, as was
"suggested by Mr. Nolan, the property line of the Refinery.
"Neither has the Board set any minimum yearly volume that
"must be taken by the Refining Company although the
"Refinery , upon the connection in question being made,
"will be required to take a minimum amount of 3,000 barrels
"of oil or petroleum products at any one time. There are
"other matters and perhaps other conditions which will
"probably have to be considered before arriving at any
"final order, but these will have to be given consider-
"ation later on.

" In the meantime the Board will
"and it does now order, that Valley Pipe Line Company

"Limited do, without any undue delay, proceed to con-
"struct a pipe line connection, capable of efficiently
"transporting oil and petroleum products from the Pipe
"Line Company's trunk line to the tanks of the Refinery
"of the Lion Refining Company.
" The Pipe Line Company shall have
"control of any part of the connecting pipe line that
"may be situate upon the property of Lion Refining
"Company for all necessary purposes in connection with
"the transportation of petroleum products to the Lion
"Refinery.
" THE BOARD OF PUBLIC UTILITY COMMISSIONERS,
" A. A. Carpenter,
" Chairman.
"Certified a true copy,
" G. A. Thibault, Secretary. "

THE CHAIRMAN: What is the date?

MR. FRAWLEY: Dated the 13th of October, 1939, Order Number 8,794.

MAJOR LIPSETT: There has been nothing done at all to comply with that order since, Mr. Plotkins?

MR. PLOTKINS: I met Mr. Coultis twice since then and endeavored to go into the details and Mr. Coultis told me that it was up to the Company and when he had recieved instructions he would go ahead and put in the line and the last time I saw him was probably two or three weeks ago and that is where the matter stands so I think I will just write the Board and point out that nothing has been done. It is fortunate the weather has not been severe and the pipe line can still be put in because our business, heavy shipments,

will start from the first of March and next year we will not be able to put in the line.

MAJOR LIPSETT: I would be glad, from my own point of view, if you would refer to it before you finish, to the recommendations of this Commission and the order generally, because, without reading it over again, my general impression was that the intention was that you would benefit by this new rate as from the date when that report of ours was accepted by the Government and you have been waiting now for many months, first of all, before you got your order from the Utilities Board and now you are being held up for two months. There may be some reason for it but we have not heard of any, since the actual order was made.

MR. PLOTKINS: Yes, Mr. Commissioner, I will deal with it then at the end. I want to point out that we have been receiving the benefits at the reduced pipe line rates from 15 cents to 9½ cents, we have received that the same as all the rest of the Company.

MAJOR LIPSETT: But you are paying the 6 cents.

MR. PLOTKINS: We still pay the 6 cents because of the fact that the pipe line connection is not into our refinery and the Imperial, who owns the line from their terminal to our refinery is still pumping it to us through that two inch line.

MAJOR LIPSETT: Have you taken any advice as to whether or not you are liable for that 6 cents under the order of the Government based on the report which we put in.

MR. PLOTKINS: No, I did not, sir. I did make representations to the Pipe Line Company myself that I should

not be called upon to pay it but I did not take any advice.

MAJOR LIPSETT: Were you refused delivery of oil through the pipe line unless you would pay the 6 cents, is there anything on paper?

MR. PLOTKINS: No, I do not know, I know if we discontinue paying the 6 cents we would not get any oil. I am certain of that, so we pay the bills every month as they become due in accordance with our Agreement.

MAJOR LIPSETT: Have you made any protest about it or anything?

MR. PLOTKINS: Oh, yes, I have seen Mr. MacLeod and pointed out that I felt it was unfair and I pointed that out to Judge Carpenter at the Hearing and I told him that time was valuable to us because of the fact that it meant so many dollars every day and that it had been in abeyance now for several months. I did not wish to bring this matter up in all that detail, I just merely wanted to point it out that when we are dealing with a Government Board or when we have to go through Government Agencies, that the time factor must be taken into account; in other words, if conditions had been competitive in the pipe line business, if there were two pipe lines, I would not need any Board. I would have been able to have gone to one Company or the other and inside of 24 hours have got a connection but because there is only one pipe line and the business, is, by that fact monopolistic, I have to deal through the regular channels and I am not complaining but I am just pointing that out.

MAJOR LIPSETT: Mr. Plotkins, so far as I am concerned, if you have anything more to say about it before you sit down I will be very glad to hear it because as I

remember our recommendation, I do not know what happened after that, but our recommendation was that you were to get it.

MR. PLOTKINS: It was, sir. Now to carry on with this matter, and I do not think it is going to take very long to finish this pro-ration subject.

Mr. Walsh pointed out when I closed just before the noon recess, that pro-ration had restricted the source of supply and he goes on and says the effect of pro-ration, and then :

"MR. SNYDER: In other words, his supply is "totally less or in the hands of companies with which he "is not connected? What do you mean, is the total supply "less?

"MR. WALSH: No, the total supply isn't less.

"MR. SNYDER: You think that proration turns "this oil into channels which make it not available to "you?"

Now this is the crux of the whole proration scheme as it works out in Texas and in Turner Valley. The oil is there. It is produced but it is produced by some-one else who has control of it and you must deal with this other company in order to get it.

"MR. SNYDER: You think that proration turns "this oil into channels which make it not available to "you?

"MR. WALSH: That is correct.

"MR. SNYDER: I wish you would explain that "situation, just exactly what you mean by it.

"MR. WALSH: Taking East Texas again, for

"example, there are several independent refiners
"there today that are shut down. Theye are unable,
"to get a crude supply. The only way they could get
"it would be to go out and pay premiums to well owners
"in order to get sufficient crude to run their plants.
"MR. SNYDER: Do some of those refiners have
"gathering systems of their own?
"MR. WALSH: Complete gathering systems in
"the East Texas field.
"MR. AVILDSEN: Why would they have to pay
"premiums? I don't understand.
"MR. WALSH: You and I would own a well; we
"are selling to, for example, a major company. There
"is no reason in the world why we should disconnect
"from the major company and sell to an independent
"producer. He must offer something.
"MR. AVILDSEN: What is the difference between that
"and the situation which prevailed when the independent
"built the refinery?
"MR. WALSH: At that time, the well owners were
"having difficulty getting connections.
"MR. AVILDSEN: There was an oversupply?
"MR. WALSH: There was an oversupply.
"MR. SNYDER: Has proration affected your company
"in the way in which you have been describing?
"MR. WALSH: Yes, exactly that way.
"MR. HENDERSON: You don't mean that you have had
"to shut down. Didn't you say in response to my
"question you had no difficulty in getting crude?
"MR. WALSH: That is right. We had no diffic-

"ulty in getting crude but at the price we had to pay "showed an operating loss.

"MR. HENDERSON: Do you have to pay a premium?

"MR. WALSH: No, we paid the regular price, "plus the tarriffs.

"MR. HENDERSON: You said, as I understood, in "response to Mr. Snyder's question, exactly the same "way, and you have been affected in a different way.

"MR. WALSH: Not to the same extent. We "didn't have to shut down. We would have had to shut "down if we had continued the way we were going.

"MR. SNYDER: When this situation came about, "you switched to another source of supply?

"MR. WALSH: Exactly.

"MR. SNYDER: It is true you switched at that "time to the Mexican source of supply?

"MR. WALSH: Yes.

"MR. SNYDER: Mr. Walsh, would you care to "venture any opinion as to how proration affected the "independent producer?"

"MR. WALSH: Well, I am sure it has had a "very harmful effect on the independent producer in "Texas. To my own knowledge a number of the best "producers there had stopped putting money in new "ventures in Texas, Any new investments they have been "making have been in Louisiana, Arkansas, Illinois, "New Mexico and other States where the proration laws "are not so stringent."

Now this man points out that he would have had to shut down if he had continued buying

in that field at the current field price. While it is true that he was not called upon to pay any premium, the current field price, because of the effects of the proration laws in that State, had caused the crude to be out of line with the marketing value of the gasoline which is refined in Houston, which had to compete with world prices and that was brought about by pro-ration raising the price higher than world levels.

Now as we know, the testimony has been given before this Commission that in the United States that is possible because of the tariff on crude; in other words, if there was no tariff on crude a situation like that could not develop but because of the tariff on crude that is imposed on any crude coming from foreign countries, the United States is able to maintain a higher price for domestic crude than the world market and this man was refining gasoline and selling it in the world market.

Now he could buy crude in Mexico apparently and refine and sell on the world market and make a reasonable profit but he could not buy crude at home and do that.

Now, we are situated here in Turner Valley, our company is situated, in exactly the same conditions. When I come to Marketing, I am going to point out how it actually works with our company but the principle is, if we are called upon to market a third grade product at a price which competition has set lower than what we can pay the price in Turner Valley, refine it and sell it, we are restricted, we are in a position where we have to quit bearing competition on the market for competitive products;

[illegible]

[illegible]

[illegible]

in other words, if there was no proration and if there were several fields available and we could go and pay for crude what the crude is worth to us, automatically the maladjustments would take care of themselves because there is no point in any competing company putting the price of third grade products down to a price where we cannot sell products at a profit. It is obvious in order to stop our method of competition that they must put the price of third grade products down below the profitable level and because of the fact that Turner Valley is under proration and by that very fact stabilizes the price on crude at the competitive figure, we are unable to continue to buy that crude, process it and sell it at the prices which are imposed on us by competition. Now I am going to deal with that a little more at length later on.

THE CHAIRMAN: You are going to hand in that article?

MR. PLOTKINS: Yes, I would like to. There is another man in there but there is quite a little bit extra on that same subject by various witnesses but I will not stop to read those.

MAJOR LIPSETT: You are not passing from "field prices" yet, Mr. Plotkins, are you?

MR. PLOTKINS: I cannot say.

MAJOR LIPSETT: Before you left it, I wanted you, if you would, to give us your views as to the suggestion made that the posted field price should be increased by the 8 cents, I do not know whether you can say anything about that.

MR. PLOTKINS: No, I read about it and I will comment on it.

MAJOR LIPSETT: Very well.

MR. PLOTKINS: That finishes, so far as my brief is concerned, the question of Conservation.

As I point out in the final paragraph that if Conservation is allowed to continue on the present principles it cannot help but, based on past experience, result in a concentration of the production into a few hands.

THE CHAIRMAN: What do you suggest, Mr. Plotkins?

MR. PLOTKINS: This man here has made a proper distinction between "Conservation" and "Pro-ration".

THE CHAIRMAN: Mr. Walsh?

MR. PLOTKINS: Mr. Walsh. He goes on and suggests what the problem is and how to meet it but it takes several pages.

THE CHAIRMAN: You adopt his views, do you?

MR. PLOTKINS: Yes, I am going to express his views and the only view that any same man in the business can come to, that is on the competitive basis.

Now pro-ration is not necessarily, as I have maintained throughout this hearing, to accomplish conservation and if the Conservation Board carries out its duty on its strictly Conservation basis, which would mean purely engineering and prevention of waste, the question of production would have to take care of itself; in other words each company or operator would be bound by the Conservation Board to produce only under their orders as to engineering practices and whatever oil was produced would be produced without waste. Now that would throw, at the start, possibly a lot of oil on the market but it would cure itself the same as anything else cures itself under the competitive system; when there is too much oil the price would go down. It

probably, in the operation of going down, it would have opened up new markets because of the fact that when the oil gets down to a certain level it would displace other products or it would become cheap enough so that the consumption would go up and while the operations of the law of supply and demand would ultimately result in restriction of production, it would in the process acquire additional markets and markets, - price is not everything in the oil business, price per barrel is only an index, it is the total amount of money which we receive out of an enterprise which decides whether we make a profit or whether we do not and the producer, in the course of an open market, finding himself with a lot of crude for which he saw no immediate market, he would go out and probably establish a new refinery or he would probably find new markets. He might go across into the United States. He might find a market on the coast; in other words he might do what any other man in his position with ability to run his business would do, he would go out and increase his income by selling at the price that he figured he could make a profit and the shock of one producer against the other eventually determines the price level and while it is true that it may go to extremes and it creates such a condition that it would entirely dislocate the market, - it is not to be expected in Alberta or in Western Canada because we have conditions that would tend to spread the crude to the coast and further east. It is true that that would be effectively prevented for a while because of the fact that the market is at present in the hands of two or three large organizations but that would not exist for very long because if a producer found himself with a lot of crude and no market, he would

immediately start to butt into the market of the bigger companies and he would create himself a market with the result that we would have competition in price in products and the same as in the refined products, it would eventually find its level.-- Now, ---

THE CHAIRMAN: Take the United States today, do you know of any functioning Conservation Board that does not have regard to market demand.

(Go to Page 16,534).

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MR. PLOTKINS: Mr. Walsh in his testimony points out that the degree of pro-ration varies from State to State, and that in some States it is more stringent than in others. There are some States that do not attempt to pro-rate but they do give effect to the Bureau of Mines findings as to the market demand and they co-operate with the other States through the Inter-State Oil Compact and hold down the production. But, as has been pointed out in evidence, and especially in front of that Commission, that has had the effect of defeating the very purpose for which it was originally formed, and that was to stabilize price, not to prevent waste. It is, after all, a dual purpose. Pro-ration is to apparently first, or originally was conceived to prevent waste - that is to prevent over - production an oil attaining uneconomic levels. But the main factor in pro-ration when it was conceived was to bring the price up to what the companies or the industry felt was a profitable level. Now, the question of what the right price is in Turner Valley is impossible to say. If we take it on the world basis we know what the right price is because competition from the United States or from other fields will decide that. In other words, it will decide how high we can go. That is what it does now. If we forget about the American situation and the world situation and allow the production in Turner Valley to assert itself then the price will come down to whatever level the production activities can be carried on and the public will benefit, because, after all, it does not make any difference whether the crude is 50 cents or $1.50, if it can be produced profitably. And if there is sufficient crude in Turner Valley to permit the

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price to go down to 50 cents and yet produce it profitably the country will benefit. I do not see any other theory except, as I say, that we adopt the world-wide attitude of the oil companies and treat this as a part of the domain of the oil companies all over the world. But if we treat it as a strictly Canadian and local business, as it can be treated, and with the war it can be treated that much better, we will allow the crude to find its own markets and its own price level. It won't go higher than the world price unless we protect it by tariff. It will go lower if it can be produced profitably

THE CHAIRMAN: The suggestion to us is that the cost of crude has nothing to do with it; that the consumer when he comes to buy his gasoline he will pay that price that is set by competition.

MR. PLOTKINS: True.

THE CHAIRMAN: And all that would happen would be if the crude got low enough that the producer would suffer and the consumer would gain. I say that is the suggestion from the evidence.

MR. PLOTKINS: Now I have to point out when I come to Marketing why that is not correct. In our case we can illustrate it with the facts. Now, with resepct to the 8 cents or the difference between what the pipe line rate was before and what it is now, going to the producer, I merely want to make one observation. Who pays the pipe line charges? The refiner does. The producer does not. In our case, if we were making a lot of money, what I mean by that is a lot of money per gallon,undue profits, then I would feel that under the conditions that exist, where the

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Government sets a rate and where pro-ration governs the price or at least affects the price, I would feel like saying "Now we should pay these producers, we are removing them from the field of competition and we should bonus the producers to whatever extent we feel like doing." But in the ordinary course of business and in refining we have to go out and find our crude. We pay whatever price we are forced to pay in the field. It is up to us to figure out ways and means of transporting that crude to our refineries. In this case there is a pipe line and as a result of this Commission's action the pipe line price was reduced. The carrying charges were reduced. Now, we have benefitted, no doubt about that but, due to the position that our companies find ourselves in, we are selling our products at a loss this year. We do not feel like contributing everything out of that saving to the producer. Not saying that he may not be entitled to it. He may be entitled to more money for his production under the conditions that exist but I do claim that he does not pay the pipe line charge. We pay it. And when we go out and buy crude it is my choice, be it in Turner Valley or elsewhere, to transport it as I see fit and I naturally will adopt the cheapest means of transportation. So that is my view on that subject.

MR. COMMISSIONER LIPSETT: Your competitive position would not be interfered with in any way whether the price remained $1.20 or went to $1.28, would it, Mr. Plotkins?

MR. PLOTKINS: Yes, because at the present time if we have to give up the saving to the producer or to someone else, it does not make any difference who we give it up to,

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we would be 8 cents per barrel worse off. In other words, it would increase our loss. If we were in the position of the Imperial, with the over-all profits, whatever the evidence shows - and I have it here in figures - by taking away that 8 cents, from the Imperial or any other company if they think that the price of crude was too low under the existing conditions, then it would not be a question of giving them 8 cents out of the pipe line, it would be a question of raising the price to meet the situation and make the crude in Turner Valley competitive. So the pipe line rate has nothing to do with crude. It affects the price of crude because if the pipe line rate is high it restricts the market for Turner Valley in competition with some other crude laid down at any other particular point.

MR. COMMISSIONER LIPSETT: The suggestion is that the effect of the pipe line reduction on the price of crude should be that the price of crude would go up 8 cents?

MR. PLOTKINS: Not necessarily.

MR. COMMISSIONER LIPSETT: One affects the other.

MR. PLOTKINS: Yes. It might and usually does result in extending the market for the product. The lower the cost the further we can reach with our products.

MR. COMMISSIONER LIPSETT: You put it that you might be able to expand your sale and consequently the output by reason of having the crude somewhat cheaper?

MR. PLOTKINS: It would increase.

MR. COMMISSIONER LIPSETT: Now, in fact, how would that happen in your case? How could you increase your-----

MR. PLOTKINS: Our sales?

MR. COMMISSIONER LIPSETT: Yes.

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MR. PLOTKINS: In the course of my evidence I pointed out one matter, and it just happened a week ago I got a letter from that particular company and this company is in the Crow's Nest Pass, a coal company. Three years ago I went to the trouble of making a survey, an engineering survey of the application of oil to coal for dust-laying purposes. It is only this Summer that the company has been able to write us and say "Well now, we are now ready to go into it on a big scale but we need a lower price." And they set a price of 4 cents a gallon, which was a profitable price if we took quantity into consideration. Now, that 8 cents has meant a lower cost of that residue for us. I mean the residue would cost us approximately half a cent a gallon less as a result of the pipe line reduction. Now, we are able, because of the lower cost of these residue products, to displace calcium chloride in the treatment of coal. Now, this one company has been using oil on a small scale for three years. Two other companies have done the same. Now it appears we are going to displace entirely other methods of treatment and the market, as I estimate it, is over one million and a half gallons. That is one instance. Then you have other things, as I pointed out in the course of my evidence. In other words, when we are competing with another product, whether it be calcium chloride or be it something else, and we have to meet price in order to displace the other product, the lower our cost the better able we are to take that business away from some other industry. The result is we expand the market for petroleum products.

MR. COMMISSIONER LIPSETT: Your idea is then that there be

extended use of petroleum products within the area at present served from Turner Valley rather than an extension of the territory itself?

MR. PLOTKINS: Both. There is extended use by the fact of the cost being less. Then there is also extension in the market because of the fact we are then able to take on additional business because our cost is less. I will illustrate. In the past I have refused to consider selling in Saskatchewan because our cost of producing the products and the transportation cost was such that the net-back was not satisfactory. The result was that we have refrained from doing that business. We happen to be in a different position than an oil company that owns its crude or part of its crude. We are not pushed to sell anything unless we make a profit.

MR. COMMISSIONER LIPSETT: Is that competition you speak of now something between your company and one of the major companies or is it the increased use of Turner Valley crude oil products?

MR. PLOTKINS: I will point out definitely what I have in mind. The Natural Sodium products have a refinery in Southern Saskatchewan. They have been importing crude oil from Montana. The evidence has shown that. They came to me and they went to other companies and they said "We are willing to discontinue bringing in crude from Montana and we even will discontinue our refining operations if we can buy fuel oil for so much a barrel." Now, because of that reduction, or at least the reduction was one of the causes, and in fact the major cause, because that reduction has the effect as far as our company is concerned that the cost of fuel oil is low, and we were able to make him an offer

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that would displace the American product. So that, you see, it is very hard to point out definitely how it does it but it does it. It gradually displaces other products. It is true that it may also displace other companies' markets but if by that fact I have taken the crude market away from a major company who controls their own wells in Turner Valley and given it through my efforts to an independent, I have created a competitive situation in Turner Valley and in turn anywhere else where oil may be discovered, and that competitive situation will give the independent a chance to go out and expand the market, either through price reduction or through absorbing the increased transportation charges. The net result will be they will expand the market.

PART TWO--PETROLEUM PRODUCTS

A. REFINING AND PROCESSING IN ALBERTA

Cost

Evidence submitted to the inquiry has shown that having in mind the geographical situation, population and demand for petroleum products that refinery costs in Alberta are reasonable and that refinery capacities capable of producing the high quality products now demanded by the consumer are not excessive.

At the present time we have Imperial building a new refinery. We have the B. A. that has already built one. Gas & Oil Products have built one. We are building. That is all cracking plants capable of supplying the market with the quality of products it requires. Now, the total capacity of all those refineries is just enough to take care of the immediate future, which means that there won't be a lot of idle capacity, not being put to

work. So that there is no, from that standpoint at least, there is no heavy refinery carrying charges that is being put into the price of refined products at the refinery door.

Price

In reviewing the evidence, prices charged by the refineries to wholesalers and jobbers can not, in the light of refinery costs, be termed unreasonable, and as the refineries at present operating in Alberta market both through their own organizations and through jobbers, refinery prices for individual products can only be considered on the basis of average net-back on all products and the evidence shows that the profits are reasonable.

This is, of course, true only of the major company refineries who have the opportunity to manufacture and sell leaded and straight-run products which gives them an average net-back sufficient to show a reasonable profit, but when we consider the position of the independent refinery with no cracking facilities, who is obliged at the present time to sell his straight-rur products at competitive prices, which do not return to him his cost, he is forced to operate at a loss.

With respect to what should be the fair and equitable refinery price or prices I propose to deal with this when reviewing marketing prices, as each is governed by the same factors.

With respect to Lion Refining Company's 1938 refinery operations our figures, (Ex. 542,) show that the average cost of producing a gallon of refinery product was 8.352¢, exclusive of income tax, and the average selling price was 8.83¢, leaving an average net margin per gallon of .478¢, or slightly

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less than ½¢ per gallon. (Ex. 542)

This compares with the figures shown by Mr. Cottle for the Imperial Oil in Ex. 667 of 7.8156¢ cost, exclusive of income tax, and a selling price of 8.66¢ per gallon, leaving a refinery margin of .8444¢, roughly 8/10 of a cent, and shows that our manufacturing costs are higher than the larger refineries', but not at the expense of the public, although when our cracking facilities are installed we will substantially lower our costs and they will then compare more than favorably with the larger refineries', accounted for in part by lower capital investments and consequently lower carrying charges.

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THE CHAIRMAN: You heard what Dr. Brown had to say, Mr. Plotkins, that you could not hope to stay in the picture unless you were able to perform all operations.

MR. PLOTKINS: You cannot hope to at the present prices, that is correct.

MAJOR LIPSETT: Didn't he go a little further, Mr. Plotkins, didn't he go almost the length of saying that it was possible that the refiner should be encouraged to exist at all only if it catered for the whole length of products which were required by the motoring public today.

MR. PLOTKINS: That is true but that must be qualified, Mr. Commissioner. Turner Valley crude produces roughly 50% gasoline and that gasoline is of such a quality that it can be leaded and with the market which we have here split, in our case at least 60%, probably 40%, automotive fuels, we are well able to take care of all our refinery products even with a topping plant, providing the price of third products, third-grade products is in relation or in line with the leaded products but because of the competitive factors they are so low that we are not able to meet the situation so we are forced into cracking but normally we can produce just as profitably.

MARKETING BY WHOLESALE

Cost: Forward:

I propose to deal with this phase in the light of conditions as they existed immediately prior to September 1, 1939.

Evidence given to the Com-

[illegible]

[illegible]

The CHAIRMAN: [illegible]

[illegible]

[illegible]

[

mission discloses that in the production phase of the oil industry, well organized, so-called integrated companies can, because of the scope of their operations and the technical ability available to them produce, in the main, at lower cost than individual local operators. In the refining phase the same general principal, in part, holds true to the extent that the greater the volume available to a refinery of a given size the lower the cost per unit, although, in the refining phase, market and transportation factors make it possible for comparatively small refineries, operating at higher efficiencies, to approximate, or even better, the costs of the larger refineries operating at part capacity; but, in the realm of marketing, volume alone is relative and is not the only yardstick with which to determine low cost.

Evidence submitted by Mr. Cottle in Ex. 663 discloses that the Imperial Oil marketing cost in Alberta in 1938 was 3.55¢ per gallon, chargeable against gasoline after making an apportionment on an arbitrary cost accounting basis, made up of 3.43¢ direct marketing costs, .10¢ evaporation and handling losses, .02¢ package costs.

In other words the evidence we have heard shows that the cost of marketing by the Imperial in 1938, after appropriating the costs on the different products according to Mr. Cottle, was 3.55¢, 3½¢ roughly.

Evidence submitted by our company discloses that we operate on a basis whereby we distribute our goods from central sales depots only,

and sell to dealers and consumers entirely f.o.b. these plants and because of the reduced capital investment involved and the comparative large volume of sales for that capital employed.

Our figures were taken and split up, brought out in exactly the same basis as the Imperial figures submitted by the Imperial. They are comparable in every respect.

We have reduced our sales expense on the same cost accounting basis to .938¢ per gallon against the Imperial figure of 1.583¢ per gallon and our cost of administration which includes all items of overhead covered by Imperial cost statement to .958¢ per gallon, against the Imperial figure of 1.967¢ or a total marketing expense by Imperial of 3.55¢, and Lion of 1.896¢.

In other words on exactly the same basis we were able to market for roughly 1.9¢ per gallon against the Imperial's 3.55¢ per gallon. I am amplifying that later on to show the competitive effect of that situation.

MAJOR LIPSETT: Now Mr. Plotkins, in the case of that, is it not necessary for the Imperial to reduce the price of third-structure in which you are competing.

MR. PLOTKINS: True, they have to meet our competition.

MAJOR LIPSETT; To meet your competition.

MR. PLOTKINS: Yes, and I am not complaining because they have reduced it to even the point where it is unprofitable to us so long as we do not have the

legislation that effects the crude situation; that effects our marketing condition; that legislation where we cannot, where we are not able to meet the situation in our own way.

MAJOR LIPSETT: I thought the point you were making just a moment ago was, that the price of third-structure had been possibly unfairly reduced to a point where you were operating at a loss and that your suggestion was that the price of that third-structure should be in some way maintained or put in proper alignment with "Q" and Ethyl.

MR. PLOTKINS: No, that is not the stand I take and if I may be permitted to carry on here I will come to my conclusions as to what the situation is.

MAJOR LIPSETT: Very well.

In the matter of capital investment devoted to marketing the Imperial Oil in Alberta shows a total capital employed, Ex.580, at its depreciated value of $3,681,634.93, and sales of $5,183,000.00, this figure excluding freight. Whereas our marketing company had total sales of $290,362.20, exclusive of freight, on capital employed at depreciated value of $16,016.16.

This gives a ratio for the Imperial Oil of $1.41 of sales to each $1.00 of investment, and for our company of $17.70 sales for each $1.00 invested. The profit worked out by Mr. Cottle with respect to the Imperial's 1938 marketing operations shows 10½% on invested capital; in the case of our company the above figures show a profit of 124% on invested capital.

Out of a total operating gross margin of $1,520,516.44, Exhibit "659", the Imperial Oil shows a total expense exclusive of freight, sales tax and packages, of $1,021,694.80, or a ratio of expense to gross sales of 66.1%, before deductions for income tax.

Our figures on the same basis show a gross margin of $62,415.09, and total expense of $42,209.17, or a ratio of 67.6% as against 66.1% of the Imperial Oil.

Hence we can conclude that our marketing expense which includes, in the main, salaries and wages to employees and the purchase of supplies, are equal to or better than the Imperial Oil's and our low marketing costs are not obtained at the expense of our employees or suppliers.

These figures demonstrate that while the Imperial Oil's profit of 10½% of their capital investment is very reasonable I maintain that their system of marketing is too complicated and too costly. Operating on a less costly basis our company was able, in 1938, to market its refined products for a net average realization of 13.047¢ per gallon whereas the Imperial had a net realization, on gasoline, less freight of 14.49¢ per gallon, Exhibit "656", on the Calgary Refinery gallonage, or an average sale price to the public by our company of 1½¢ less; and yet performed this service at a reasonably large profit to ourselves.

Now what is to be gained by these figures is that while in the production, and to a

large extent in the refining, the operating methods are pretty well frozen, operating economies can still be effected, technological advances will greatly reduce costs but in the realm of marketing, ingenuity and a thousand and one factors can operate to bring down the costs of distribution substantially, cutting it in two or three or four, which is not possible with the other phases of the business and when we take our operations and see what we have done, well that is self-evident that the marketing can be done in a million different ways and ultimately to the benefit of the general public if the cost is brought down.

MAJOR LIPSETT: Now Mr. Plotkins, just to follow that up, because I have been impressed somewhat with the difference in the marketing spread----

MR. PLOTKINS: I am going to deal with that.

MAJOR LIPSETT: You are coming to that.

MR. PLOTKINS: Yes, I am coming to that subject.

MAJOR LIPSETT: All right, then.

MR. PLOTKINS: Then there is another type of marketer in the Province, such as Oughton Brothers, who operate in the main by selling direct to the consumer, as opposed to our type of operation where we sell, in the main, to the reseller. This type of marketer can reduce his price to about our reseller price level, and, because of the operations being entirely local, and limited, and carried on by the owners themselves, can operate at a lower cost of marketing than our company

and yet perform this operation very profitably.

THE CHAIRMAN: Who can do that.

MR. PLOTKINS: Oughton Brothers. They operate on a still different basis. We had evidence here I do not know that they gave evidence as to their operations but we do know that they are reselling at dealer's prices. Oughton Brothers as a general rule sell to the consumer direct in the territory immediately adjoined to their bulk plants, to their service stations and bulk plants and they have made it a practice to pretty well sell on the basis of the average independent company's dealer price. Now they were able to do that because they were able to buy, they patiently built up the volume which gave them an opportunity to go out and buy the same as any other jobber and by their method of operation where they do not branch out and appoint any dealers or scatter their stocks over different places, because of the situation which they found themselves in, three Brothers, and their wives working, they were able to sell at a lower price very profitably to themselves and at a reduction to the public. There is no crime there. They certainly have the right to carry on their business in their own way.

Then there is still another type of marketer----

MAJOR LIPSETT: Dealing with that now, Mr. Plotkins, would it be fair to say that Imperial or British American should have to operate on a price margin comparable with a family concern where the wives of the men and all their family are working.

MR. PLOTKINS: No.

MAJOR LIPSETT: Would that be a proper set-up for the Province.

MR. PLOTKINS: No, but I am going to show they must meet that competition and it is the only way you are going to get any reduction for the public, to allow these firms to string out and bear their proper weight on the bigger companies which operate on the orthodox basis.

MAJOR LIPSETT: Would that not be unfair to the other side, supposing you had 100 or 1,000 or whatever you needed, Oughton stations, to serve the Province, would it be fair to say that was a proper standard for a company like the Imperial or the British American or would it not be possible----

MR. PLOTKINS: Mr. Chairman, and Mr. Commissioner, I will answer that this way, why should it be permitted that 20 people like Oughton Brothers or 100 operating each in his own little district, if he is able to cut the price 2½ or 3 cents, that is the competitive system and there is nothing wrong with it and if it means that the big company has chosen a certain way to do business and they cannot meet that competition then they will have to either adopt themselves to it or pass out of the picture.

Now that does not mean because they pass out of the picture that there will be no products available because Oughton Brothers or twenty like them will create a market for the independent refiner

or a major refiner and what will happen is what has happened already in other products, the manufacturer will go out of the picture because they are not able to compete with the existing conditions in that industry. We have a good case in point in the automobile industry; the automobile companies tried to operate their own branches and they could not do it at as low a cost as did private individuals, so they passed out of the picture. Now if the situation brings about in this oil business, a situation arises where the number of jobbers strung out all over the country and operating on somewhat similar basis as Oughton Brothers or ourselves and it had the effect of bringing the price down and the major companies sought to maintain that price and they were encouraged and were abetted by laws to do that, now where is the advantage of the competitive system. We are seeking to lower prices, to get more for our money and I do not know of any other way of doing it except by letting private enterprise bear its proper weight on the competitive system.

MAJOR LIPSETT: Does that more or less mean in your opinion that, assuming the refinery prices are correct, for the purposes of the argument, that the distribution costs after it leaves the refinery under the present system are too high.

MR. PLOTKINS: Yes, they are too high. They have been reduced. When I started in this business there was 10 cents a gallon between the refinery price and the selling price and today they are down to 5. Now what has made the difference, people like us, like Oughton

Brothers, they generally bear down on that market.

MAJOR LIPSETT: Now supposing you were to eliminate, by this competition, the Imperial and the British American system of distribution altogether through competition, would that not result then in that they would have to get a higher price at the refinery door to take care of their investment and to enable them to make a profit at all.

MR. PLOTKINS: Mr. Commissioner, in the first place we would not eliminate them. They would just gradually adapt themselves to the conditions and the second place is that the refinery price at the present time is, permitting the refiner to make a fair normal profit, so if tomorrow the Imperial decides to sell all its distributing system to somebody else or go out of the picture, they could still carry on the refining operations and the production operations profitably, that is if we are to take the figures which were given to the Commission in these various accountings, these various exhibits.

MAJOR LIPSETT: Now the loss which you are suffering at present, is that in the refining end or in the marketing end.

MR. PLOTKINS: I am coming to that. I cover the subject pretty thoroughly, to come down to the point of leaded gasoline because I think that is where the confusion has arisen as to whether there is competition or whether there is not and I am painting the picture right through to bring the point out.

MAJOR LIPSETT: Perhaps I should not interrupt you, Mr. Plotkins, but I wanted to be sure that these

various matters which were in my mind were dealt with.

MR. PLOTKINS: Yes, then there is still another type of marketer, for example, Trimble & Sons, who operate in the main without bulk stations or agents, transporting the goods direct from the refinery to the consumer, and the evidence shows they conduct their marketing operations at a total spread over cost of approximately 1½¢ per gallon, of which about 1/2¢ per gallon was realized as profit; in this case, also, showing the entire operation is conducted very profitably.

Now if these people were not making a profit then I would say they are a burden on the industry but if they have devised means of marketing at a profit and still can sell cheaper, now they are having their proper effect on that competitive price structure.

Now I submit to the Commission that if the public is to be given the advantage of lower prices it will be brought about, substantially through economies affected in the method of distribution, and that all types of marketers and distributors contribute to healthy competition, and are necessary to bring about lower distributing costs.

Price:

Evidence submitted to the Commission clearly indicates a very wide spread between the tank wagon sale price of leaded gasolines and third grade products such as gasolines, kerosene distillates and diesel fuels.

If we take the present refinery price for "Q" grade gasoline at 10¢ and the 16¢

tankwagon this leaves a marketing spread of 6¢ whereas the third grade shows a refinery cost of 9.2¢ and a tankwagon of 12.5¢ or a marketing spread of 3.3¢.

It is evident that the marketing spread in the case of third grade gasoline, being 3.3¢ is not sufficient to pay the Imperial's average marketing cost of 3.55¢ per gallon, and the Imperial absorbs this loss in their total gallonage, as their records show that they have an average marketing spread of 5¢ per gallon which covers all products.

In other words, they can carry on profitably even when the posted tank wagon on third grade products has been reduced to unprofitable levels. For themselves and others.

In our company where we do not manufacture leaded gasolines and our sales consist mostly of third grade products which we do manufacture, we are not in a position to make up the loss in the marketing of third grade products through the higher margins, not available to us, to be had in the sale of leaded products, and this situation effectively curbs our efforts to maintain ourselves in the marketing picture, and have our competitive effect on the sale price of leaded products.

Ordinarily a situation such as this, which I have just described where third grade products are marketed at a loss, does not continue long. The past situation in Alberta as the evidence has disclosed was that the independent marketers, being unable to obtain supplies of leaded products from the major companies

at competitive refinery prices, and with no independent refinery sources being available were not able to bring to bear their proper competitive influence, through their lower cost marketing, on the sale price of leaded products.

With an average margin available to the independent marketer on leaded products of 3½¢ or less, for a long time, instead of 6¢ or 6½¢ to the major company it is self-evident that competition, while it cannot be denied that it existed, was limited, in our case, to savings in marketing and delivery costs to the consumer.

In other words what I am trying to say is while there was competition in leaded products because we did, by cheaper transportation methods and because our costs of marketing were less, we were able to exert some pressure even although we only had a 3½¢ margin to work on as against the major companies 6 or 6½, but if we had had 6 or 5 and we are going to have it from now on when we manufacture our own products, we will be in the same competitive situation as to costs to start with as the major companies. Our competition will exert itself because our cost of marketing is less, our cost of marketing is less, and our capital investment is less, therefore, I seek only to make a reasonable profit, why, because that is the way we are going to get more money in the end and then we are not going to start the thing by cutting the price because cutting the price is not going to get us anywhere but by offering concessions that effect the price. Whether we break down the price of leaded products if con-

ditions permit,-now you may not bring them down, why, because with war conditions, the products that we use and the cost of labor or taxes may go up to the point where we may not be able to effect the present price but we will certainly exert our influence to see that it comes down in proportion to cost, to our cost, to Oughton Brothers' cost, to Trimble Brothers' cost, to everybody else's cost that markets in this Province, with the result there will be no other products in the market for the major companies to fall back on to get a bigger profit for themselves or to maintain a higher price that permits bigger profit because conditions permit them. They will have to just submit to the competitive system which means that when they find us selling under conditions which takes away the business from them, they will meet it and gradually it will express itself by either a lowering in price or by maintaining the price instead of raising it.

MAJOR LIPSETT: I suppose there must be some limit, Mr. Plotkins, to cutting away profit, otherwise you you might find that it was not to the interests of a company to invest its money in refineries in this Province or to carry on existing refineries even.

MR. PLOTKINS: Well Mr. Commissioner, I pointed out that this question of marketing has nothing to do with refining, has nothing to do with production; the marketing costs is what in the main will effect substantial reductions in prices to the public.

MAJOR LIPSETT: I see. Your criticism really then more or less begins at the refinery door.

MR. PLOTKINS: When it concerns marketing.

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MAJOR LIPSETT: Which?

MR. PLOTKINS: So far as it concerns marketing.

MAJOR LIPSETT: Yes.

MR. PLOTKINS: I am not forgetting that crude prices have something to do with it, with the cost of the product.

MAJOR LIPSETT: But I mean you are more or less satisfied with the existing conditions until the moment when the refined products leave the refinery.

MR. PLOTKINS; Oh yes, I accept the position that for the time being with the Conservation Board there, that the price of crude as it is, with the refinery technology as it is, with the volume we have to deal with and the climatic conditions we have to deal with, that the price f.o.b. the refinery is more than reasonable, it is reasonable, and therefore, we do not need to look for very substantial savings.

MAJOR LIPSETT: Now from that on, assuming for the moment that there is no criticism until the exit from the refinery, what do you say should be done then to get the market into what you would consider, a line?

MR. PLOTKINS: I didn't catch that last.

MAJOR LIPSETT: What do, what steps should be taken to correct whatever is wrong in the marketing end.

MR. PLOTKINS: Mr. Commissioner, those steps are just being taken themselves because of the fact that we would be pushed out of the third grade market we have gone ahead and we are building a cracking plant. The Gas and Oils

have done the same. It will correct itself from now on. I do not have any, I have no recommendations to make as to anything which should be done about it, to correct the maladjustments because the evil brings about its own cure in the oil business or in any other business that is on a competitive basis.

MR. FRAWLEY: That is the good, long swing you are talking about.

MR. PLOTKINS: Well now the long swing, I do not quite agree with, at least the impression I got by what is meant by the long swing. It is true it cannot be accomplished over night, why, because nothing can endure that is accomplished over night. You have to cure a thing step by step and you have to call for the adjustments to be made throughout the economic body of the industry you are treating with and if you try overnight to adopt something new you are going to disrupt production, you are going to discrupt transportation, so that the long swing is just, in my mind, and it actually is, it means that you must give time for the different factors to assert themselves in the normal course of business. Now that may mean a year, it may mean two years, if the problem is a very big one; on the other hand, it immediately starts to rectify itself when a condition becomes intolerable.

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L. L. Plotkins.

In other words, the moment that Imperial Oil began to put prices down of say 3rd grade products, or even before that, I could foresee it and we began to work and figure out ways and means of meeting that situation. The result is it takes us a year or a year and a half, because we have limited capital and various other reasons, but we will meet it, and after that year and a half, I am going to point out, how we can overcome that. We are not down. I am going to show that we will meet that in our own way but we want to be left alone to meet it and not to have some hurdles put in the way where we just fall over and kill ourselves and the other fellow only stumbles.

MR. COMMISSIONER LIPSETT: Supposing those hurdles - I do not know what you are referring to - but supposing those hurdles are unfairly put in your way, will it not be desirable that there should be some agency to prevent something unfair being done to you or other smaller operators?

MR. PLOTKINS: The hurdles I have in mind is the legislation on the books of this Province. I am not asking for any laws or any help from the authorities in meeting competition. I think that to-day the oil business is sufficiently well understood. We know what makes the wheels go round to a large extent and the only help we need from the Government is statistics and research, which the industry, or the smaller units of the industry, are not able to carry on that themselves. In other words, what I have in mind is that the competitive system as it works out in the oil business does not lead to the small man demanding Government protection. I think that he is in fact well able to take care of himself and probably better so than a

big company, because he is able to operate on a small individual basis and at considerably less cost and outside of refining and outside of production, in the marketing end he certainly is well able to take care of himself. Therefore, I do not ask and certainly recommend against any Government help in the form of legislation that will put us at an advantage or put us on an equal basis. I cannot foresee any Government legislation that will help us. The reason for that is this. These conditions that I am pointing out are going to continue forever, as long as the human mind is going to evolve new ways of doing things there is going to be maladjustments and those maladjustments cannot be cured by legislative enactments. They cannot be cured by three or four men getting together even in the industry and they certainly can be reviewed and considered by three or four men or a dozen men in the industry to seek causes and try and apply a remedy. Now, the advantage of Government research and Government statistics, such as has been developed in this country by the Bureau of Research in Ottawa and the Bureau of Statistics is to give us facts that we are not able by ourselves to get. The bigger companies are able. They are at the seat of authority in Ottawa and they are able to get all these figures and facts. The smaller individual is at a disadvantage in that respect and because of that fact, that those facts and that research is being carried on at a national expense it should be made available and it is made available to the smaller companies, except that at the present time there is no definite effort on the part of the industry to direct Government efforts in Ottawa or in Edmonton towards giving us definite information on our own

industry

MR. COMMISSIONER LIPSETT: Just follow that up, Mr. Plotkins, for a minute. You say that Government should carry out research work and statistical work and should be used to the benefit of the industry?

MR. PLOTKINS: And the country.

MR. COMMISSIONER LIPSETT: That means that the public of the country pays for the research and statistics for the benefit of the oil industry or certain companies in it. Why should not the Government seek to see that the benefits from that are not diverted exclusively into the pockets of the oil companies but should go back to the public, to the consumers?

MR. PLOTKINS: Well, Mr. Commissioner, to repeat, that if I can find a better way of marketing, the only way I can profit by that better way and make more money is to extend all the benefits to the public. If the Bureau of Research devises or gives us information where we are able to better budget our business; better decide what products to sell and cut our costs, the only way industry can benefit on a competitive basis right now - and I am not talking about a monopoly, I am talking about individuals in the business to-day - the only way that I can benefit if some new way is found is by putting the price down. Not necessarily directly. But I pointed out in the evidence that we could not put the price down openly. For this reason, it is only that dominant factors in the industry can do that because of the scope of their marketing operations. They recognize competition and it finally brings about a revision in values. And the result is they lower the price or raise it. But the private individual, such as

ourselves, or the small company, the only way we can give a lower price in general is to give concessions, such as bigger discounts to our dealers, and such as lower cost transportation, but something that results in lower price to that dealer or consumer. Even though, for instance, we may have the same price in Calgary for leaded products but the Imperial only gives a commission of 2 cents to their agents, which limits the benefit of those commissions to just their agents. Now, we are able to , because if we get a lower cost to give that commission to ten times the number of agents that they have and split up that business amongst maybe one hundred individuals instead of ten. Now, what is the effect of that? The effect of us giving a 2 cent discount to one of our agents or dealers which operates in a small way with a truck or with a station is for him, because of the scope of his operations being entirely local and probably because he has other lines of business too and because of the fact that we permit him to truck from our refinery direct to the consumer, it lowers his cost of distribution and he is able to have an over-all margin bigger than he really needs. The result is he cuts his price to the consumer and when that is done on a big enough scale the competing companies then lose business and the first thing we know there is a lower price in tank waggon or, such as took place a little while ago, a lowering of freight rates. That is the normal way for competition to assert itself.

MR. COMMISSIONER LIPSETT: Now, Mr. Plotkins, what do you say to this angle of it, that until the present moment there has been no one in this Province able to cater to the whole needs of the motoring community except one or two larger companies, as refiners. If it had been depending on say

yourself only, a small portion of the motoring public and a larger proportion of the farmers would be taken care of. Now in the course of giving that necessary public service these major companies have invested large amounts of capital in the Province. Now are they not entitled to consideration for that?

MR. PLOTKINS: Certainly, yes. They are entitled to the same consideration that the large elevators in Fort William were entitled to when the situation arose that grain started moving West and they built new elevators in Vancouver, and it left the big capital to take care of itself in Fort William. That is the consideration they are entitled to. Under a competitive system when we make 100 or 500% we do not split it with our neighbour, and when we lose we have to take the pill and like it. And if the Imperial Oil or any other company has devised a distributing method that we attack through our operations well they just have to adapt themselves to the new conditions and lower their costs or do something in some other way to meet that competition. We do not feel that they should be able to obtain legislation that will protect their investment, because they just did not happen to be ready for the change that has taken place.

MR. COMMISSIONER LIPSETT: I do not think there was any suggestion of protective legislation of that sort by anybody.

MR. PLOTKINS: Well, Mr. Commissioner, the present laws as they at present exist definitely result in restricting competion. The amount of service stations was attempted to be regulated. Price has been tampered with. Everything that we have in the Fuel Oil

[illegible] small portion of the retiring public [illegible] proportion of the income would be taken [illegible] in the course of giving [illegible] necessary [illegible] the [illegible] investment [illegible] capital in the province. [illegible] [illegible] encouraging for that.

Mr. [illegible]: Certainly. [illegible] they are [illegible] to the [illegible] and the large elevators in Port William were entitled to [illegible] the situation were that grain stored [illegible] small per elevators in Vancouver, and it left the [illegible] to take care of itself in Port William. That is the consideration they are entitled to. Take a [illegible] system which is made up 80% or 90% of Port Arthur and [illegible], and when [illegible] have to take the bill and line it. And if the Imperial Oil or any other company has defined a letterbilling method that we cannot follow our operations all they have to do is [illegible] the man conditions and force much [illegible] something in some other way to meet that competition. We do not feel that they should [illegible] to obtain consideration that will protect their investment, leaving [illegible] just as for happen [illegible] be ready for the change that may take place.

Mr. CONSTANTINEAU: I do not think there was any suggestion of protective legislation of that sort [illegible] anybody.

Mr. [illegible]: [illegible], Mr. Commissioner, [illegible] present laws as they at present affect distribution [illegible] in restriction connection. The [illegible] of service [illegible] attempted to be a [illegible] [illegible] [illegible] [illegible] in the [illegible]

Tax Act and all these different Acts tend to restrict competition instead of permit it, and the only result of these Acts is to protect the existing system of marketing. That is what I mean.

MR. COMMISSIONER LIPSETT: I wonder if that is so?

MR. PLOTKINS: Well I am going to read from correspondence in respect to what happened to us, because of this and that and that will probably illustrate the point.

I wish to point out that while our records show a substantial marketing profit in 1938 when competitive discounts and price reductions instituted by Imperial Oil were unknown until June 21st of that year, since then due to these reductions which widened the spreads between third grade and leaded products, our 1939 statement will show no profit and a loss on the sale of third grade products. This does not mean that our companies have not made a reasonable profit in 1939, as in order to overcome the situation created by lowering of margins without any accompanying reduction in cost on the third grade products that we manufacture and market, and having no leaded product margins on which to recuperate, we extended our activities in other phases of the business and successfully maintained our position.

In other words, when I saw what was coming we branched into other items of the oil business and we just laid down on the products that we could not make a profit on because of the situation created and we are just as strong and just as good and in as healthy a competitive condition to-day as we were a year ago or two years ago.

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The result is we are still in the picture. We are still going to have our effect on competition. And the question of third grade prices is going to cure itself. Now, there is another thing I wish to remark at this time about third grade products. They are going to cure themselves for two reasons. One is there is going to be more leaded products available at lower prices. The second thing is that the third grade products are gradually, the consumption of third grade products is gradually being reduced, with the result that in another two or three years the price of the third grade products won't make any difference. In fact, right now the average consumer will buy leaded products in preference to third grade products even with the big spread between the two and every year that goes on and laws----- Now, there is another place I wish to emphasize the effect of the laws in Alberta. Mr. Sweeney, a man I had working for me a number of years ago, made a survey for the Anglo-Canadian Oil of the marketing situation in Manitoba for the Brandon refinery of that company. I had a conversation with him as to the effect of no tax on distillates and third grade products or farm products in Manitoba. And he told me that the refineries down there had a shortage of third grade products and distillates and that they had no trouble and they were only cracking partially because of the great demand for third grade products and distillates and diesel fuels. Now, here in this Province three or four years ago the Government instituted a new system of taxation. Nothing was exempt. All products paid a certain tax. There was exemption for farm use. But it resulted in a tax on all products irrespective of whether they were farm fuels or distillates or diesel fuels

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or gasoline, third grade, and the effect of that law has been year by year to just reduce the consumption of third grade products in the Province of Alberta. Now, our farmers are no different than the farmers in Manitoba. They have the same equipment and the same consideration. But there there is no tax on distillates. Here there is. The result is that our figures show that in another two years we won't have distillates or third grade gasoline. It will be just a thing of the past unless the law changes. If the law changes a new situation is created. And maybe the farmer will go back, that is if there is products available, he will go back to distillates. Why? Because he can see a saving. At the present time our business has been seriously affected, I am not complaining, I am just pointing these things out, by the legislation that taxes all products.

MR. COMMISSIONER LIPSETT: Might that not be something in favour of taxation, if it is urging the farmers into the consumption of better grade products and giving a better return or a better chance to the refiners?

MR. PLOTKINS: No. Mr. Commissioner, the question of a better grade to the farmer is, it is not a question of whether it is better or worse, but it is a question of the cost. The farmer is going to produce wheat and he is going to produce it as cheap as he can. If he can produce it with Diesel cheaper than he can produce it with gasoline he is going to produce it with Diesel so that he will do whatever results in producing most units of work for the least money. The reason he is buying more and more leaded products is because the facilities, the taxes has one effect. It is a psychological effect. The fact is that

it is a lot easier to work with gasoline than it is wth with kerosene or distillate and bocause of the small spread between the products, due in large part to taxation - even though it is not in fact, it is not a big tax, it has that psychological effect. He just says "Well, I think we will use gasoline."

MR. COMMISSIONER LIPSETT: And has that not been beneficial to the oil industry and refiners?

MR. PLOTKINS: It may have been beneficial to the larger companies, but it has not been beneficial to us.

MR. FRAWLEY: The tax is 1 cent on Ethyl gasoline or on Diesel fuel.

MR. PLOTKINS: True, 1 cent, but it is not only the 1 cent, there is a lot of red tape to it. There is coupons and there is refunds and there is a lot of writing that the average farmer hates.

MR. FRAWLEY: It is certainly pretty easy for him-----

MR. COMMISSIONER LIPSETT: And it is a larger proportion of the price too.

MR. PLOTKINS: Yes. That is another thing with regard to that 1 cent. We take the Diesel, where we sell it to a dealer for 6½ cents or 7 cents, and there is the same tax on that as on other fuels that sell for 9 or 10 cents. There is a 1 cent tax. Now, the tax is not such a big tax probably, but that plus the red tape and plus the psychological effect on the farmer, the consumer, he just seems to have switched the business to the other product.

MR. FRAWLEY: I did not understand you. Mr. Cottle tells me you are advocating, like in Saskatchewan,

no tax whatever to the farmer.

MR. PLOTKINS: Oh no. I think I have put it in briefs at various times in the last few years to the Government what I am advocating. That is that all gasoline be taxed, whether they use it here, there or anywhere else. Because it is not a road tax. It is a general tax. But to exempt all distillates and Diesel fuels so that the farmer, if he wants to get the benefit of the lower priced product, he will work for it. He will buy a kerosene tractor or a Diesel tractor, which is a little more bothersome than the gasoline tractor, but results in a lower cost to him. If he wants to use gasoline and take things easy, let him pay the tax, like everyone else.

THE CHAIRMAN: What have you to say as to the suggestion we have had that the modern engines used on the farms are higher-compressioned engines and call for a better grade of gasoline?

MR. PLOTKINS: They do. We also find that the distillate engine and the Diesel engine is maintaining its position in spite of the high-compressioned engine on the farm. We have a case of it where the-----well, you see, what dictates the position of the farmer as to what kind of an engine he is going to buy is what is the price of the fuel. He has to choose between the high-compression gasoline engine - and if he is willing to pay a little more, if he wants to take it a little easy he may in spite of the increased cost and the tax on gasoline, he might buy a high-compression motor. On the other hand, if it cuts down the cost, and he figures there is going to be a substantial saving, he will buy the Diesel tractor or the kerosene tractor, without any tax.

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In the nett result he is doing his work for less money. But because of the tax situation in this Province there has been a heavy increase in high-compression gasoline tractors in this Province.

MR. COMMISSIONER LIPSETT: Is this Diesel oil something that could be used in the ordinary motor car?

MR. PLOTKINS: Diesel?

MR. COMMISSIONER LIPSETT: Yes?

MR. PLOTKINS: No, well, there is no motor cars. There are trucks on the road using Diesel.

MR. COMMISSIONER LIPSETT: Are there trucks using it?

MR. PLOTKINS: Yes, in the United States.

MR. FRAWLEY: And buses?

MR. PLOTKINS: Buses and trucks, and even in Canada, in Vancouver there is a large number of Diesel trucks.

MR. COMMISSIONER LIPSETT: None in this Province?

MR. PLOTKINS: Not in this Province so far. Road and weather conditions are against it, but we probably will experiment with that with our own trucks.

MR. FRAWLEY: This Diesel fuel is burned in a Diesel engine. You could not use it in your Mercury ?

MR. NOLAN: The Mount Royal bus uses it.

MR. PLOTKINS: Yes, that is true.

MR. COMMISSIONER LIPSETT: In Calgary?

MR. NOLAN: Yes.

MR. COTTLE: It is a special engine, it is a Diesel engine.

MR. FRAWLEY: Everything is special.

THE CHAIRMAN: Have we any evidence before us as to the extent to which modern machinery is affecting the farm business, that is farm machinery with high-compression

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engines?

MR. FRAWLEY: The trend of the high-compression motor on the farm?

THE CHAIRMAN: Yes.

MR. FRAWLEY: There is no evidence about that.

MR. HARVIE: I think there is considerable, Mr. Frawley.

MR. PLOTKINS: There are figures available.

MR. HARVIE: Mr. Miller's evidence was that some years ago the relation between farm and urban use was 75 to 25; but that now is 50-50, and he expects it to be 25 to 75. He attributes that largely to the reduced consumption required by high-commpression engines.

MR. COMMISSIONER LIPSETT: I thought it was the increased use of motors over farming.

MR. HARVIE: It is, but he said the other was a considerable factor too. I think the effect of his evidence was that for a farmer to do the required amount of business or work on his farm would not require as much gasoline with the high-compression engine as he would with the old form of engine; that is a material factor in the change.

MR. COMMISSIONER LIPSETT: I think what the Chairman was asking was if there was any evidence to show the growth of the increase in the high-compression engines on the farm.

MR. HARVIE: Yes, there is. I think the evidence of Mr. Miller was that the trend is that way and very noticeably that way.

MR. PLOTKINS: The Ethyl Corporation made quite a study of that and I thought I heard it here in this Commission that they gave evidence as to the amount of

horse-power per pound. Now, in regard to the Chairman's question-----

THE CHAIRMAN: It would have some bearing, if you are making the suggestion that taxes be eliminated or if we recommend that the taxes be eliminated from the lower grade fuels. I suppose you would say that the farmer should pay the same as anybody else on the higher grade, "Q" and Ethyl?

MR. PLOTKINS: Yes, if he wishes to get the benefit of them. I will explain that. Now, what Mr. Harvie has just said is correct but he did not go far enough. To-day, because of the high-compression engine there is a marked reduction in the volume of gasoline used for a given amount of work but in the other type of engine the reduction is absolutely in proportion, because if it were not they could not be marketed. In other words, if the distillate tractor was not as efficient in terms of cost as the high-compression gasoline tractor, you could not sell it. Now, I am going to give you an illustration of what has been accomplished in the distillate tractor as well as in the high-compression tractor. Fifteen years ago or twenty years ago we had tractors developing 30 brake horse-power with a weight of seven to eight tons. Great big monsters. To-day we have a similar tractor, with the same horse-power that weighs 2,000 pounds or less. We have these little Caterpillars, no bigger than this desk. They have 30 horse-power and they only weight 1500 or 1600 pounds. The result is more of that fuel is transferred into power to do the work instead of carrying itself. So that today, all types of tractors, including Diesel and distillate, have a considerably increased amount of power to be derived from a

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pound of fuel and the relative value of the tractor for a given condition, and what determines the farmer in buying one or the other is finally the cost of the work and the final cost of the work in a large measure depends on the price of the fuel. So that if the farmer in Alberta, if there were no taxes on these distillates and he were only to say to himself "I can buy a Diesel or I can buy a kerosene tractor and I am going to do that and it is going to cost me $300.00 for fuel oil, and if, on the other hand, I buy a gasoline tractor and it is going to cost me $350.00 or $400.00 - but with a gasoline tractor all I have got to do is to spin it and go on, and it is nice and smooth, and it will go a whole lot better than the other." He can decide even if he knows it is costing him a little more, he can decide to buy a high-compression engine. On the other hand, he can equally decide to buy a Diesel or a distillate tractor. And to-day, even in spite of taxes, there are increasing numbers of Diesel tractors being used, but it is only slow and gradual. Whereas, if taxes did not exist, we would have a considerably larger number of Diesels, because the Diesel is the most efficient tractor on the market to-day per pound of fuel. But because, as I say, of taxes and red tape, it has been held back more so than in other Provinces where there are no taxes.

MR. FRAWLEY: Now, the Commissioners should be told, of course, we would be retracing our steps; that we had in this Province non-taxable fuel, just the sort of thing you mentioned, but there were all sorts of abuses, blending, etc., and that blended product being exempt from taxes, or certainly not paying taxes, whether termed gasoline

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or not.

MR. PLOTKINS: That is perfectly true. We went through a period of very difficult times and conditions for the Government to enforce taxes in the past, when there were no taxes on the distillates and farm fuels, because of the existence of naphtha fuel in Turner Valley. But to-day that condition does not exist. And also to-day the Government is better informed on the methods of administering these taxes. In them days the Provinces enforcement methods and laws were not quite adequate. To-day they have a little more knowledge and the proper machinery and I do not think that it would be very difficult for the Government to effectively enforce the laws, the new laws that will eliminate taxes from the products that go into farm consumption. That is in the distillates and Diesels. There is another thing. We can manufacture gasoline out of these products in the refinery just as easily. All you have to do is have a refinery.

THE CHAIRMAN: I do not understand what the difficulties were. I would like to follow that up. When the distillates and the Diesel fuels were tax-free, how did they manage to escape taxation on "Q" and Ethyl, because the other two were free?

MR. FRAWLEY: No, just by blending. I am really an amateur on that subject and, Mr. Plotkins, you are a professional. You tell the Commission how they escaped taxation.

MR. PLOTKINS: Well, originally the Province wanted to impose taxes on gasoline and they attempted and did pass a law defining gasoline. It was very loosely drawn, with the result that if we chose to pay the tax we called it

gasoline and if we chose not to pay the tax we called it something else, and the Government was powerless under its then legislation to do anything about it. Now, that was due to plain ignorance at the time of the enforcement authorities. Now, as a result of that situation-----

THE CHAIRMAN: Was the gasoline tax collected by the companies, as they do it now. They could not escape it now, if you give a service station so much Ethyl and so much "Q" and so much of something else, surely they have to get the tax on everything that is Ethyl or "Q"?

MR. PLOTKINS: Well, Mr. Chairman, here is what happened. The companies in the main paid the tax on gasoline that went into automobile consumption. But they sold distillates to others, to dealers or to consumers-----

THE CHAIRMAN: The farm trade?

MR. PLOTKINS: Yes, that were tax-exempt, legally tax-exampt, and that consumer or dealer went to Turner Valley and bought naphtha products-----

MR. FRAWLEY: Naphtha was not tax-free, Naphtha was taxable.

MR. PLOTKINS: Yes, naphtha was taxable, for a long time it was taxable, and they could blend the taxable product with the non-taxable distillates and the result was that instead of a 7 cent tax or whatever it happened to be at the time, 5 cents or 3 cents, there was only a tax on 60% or 50% or whatever the proportion of blend was used to make up the product.

THE CHAIRMAN: You say that they have gone because they cannot get this natural gasoline to blend?

MR. PLOTKINS: Not only that, but the business

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is better organized and that type of operation has completely disappeared. The Government has much better machinery to know what is going on. They have an absolute grip on the business insofar as getting information as to where it comes from and who it goes to and whether the tax has been paid. With the result I cannot see any difficulty in defining a taxable product of gasoline or not taxing others.

THE CHAIRMAN: Then in the result, as I understand your submission, you say that if the 7 cent tax is being imposed, the exceptions should only apply to fuels below "Q", or third.

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MR. PLOTKINS: No, I didn't say that.

THE CHAIRMAN: Below third.

MR. PLOTKINS: Below third, that is right.

THE CHAIRMAN: Below third?

MR. PLOTKINS: Because the Government is naturally interested.

THE CHAIRMAN: That everything above third should bear a 7 cent tax, that is all people should be on a parity, whether it is 7 cents or 6 or whatever it is.

MR. FRAWLEY: Whether it is used on the farm or not.

MR. PLOTKINS: Yes, and the reason I say that is because it is absolutley considered by the Government enforcing agents, that there is a widespread escaping of paying the tax today on gasoline used on the farm. There is no doubt about that, and the revenue that the Government will derive will be just as great or greater but it will be, it will bear equally on everybody where now the large part of the gasoline which is consumed on the farm does not pay, or on the road to farmers, does not pay any tax.

THE CHAIRMAN: I follow your reasoning perfectly but I am not clear on it and that is why I have been pressing you upon it, to what extent is the farmer who is really using gasoline on his farm today, using "Q" and Ethyl?

MR. PLOTKINS: Oh ----

THE CHAIRMAN: You say that is serious, at least it has a serious bearing upon your argument.

MR. FRAWLEY: That is the point and you will be penalizing the farmer with the high compression motor.

MR. PLOTKINS: That is true except that each

farmer has to decide for himself and he has the investment and it is true, in the final analysis he would be penalized, no doubt about that, but to come back to what you had in mind, Mr. Chairman, today, I am, estimating on the basis of our own operations, possibly 10% of the fuels used on the farms are leaded products, that is about 55 or 60 octane. Now it will probably increase, if the law does not change, and no doubt it will unless the diesel tractor overcomes it but in my opinion it will increase under the present conditions and ---

THE CHAIRMAN: Well is it not well that it should increase?

MR. PLOTKINS: It should.

THE CHAIRMAN: It should, from the standpoint of the future of farming?

MR. PLOTKINS: Not necessarily, Mr. Chairman.

THE CHAIRMAN: I do not know, I am asking you, are these high compression engines not an advantage to the farmer, or are they an advantage over the diesel?

MR. PLOTKINS: No, the diesel is the most efficient farm tractor today. In fact, it is the most efficient power plant.

MR. HARVIE: But more expensive.

MR. FRAWLEY: The Ethyl Company does not agree with you at all.

MAJOR LIPSETT: Mr. Plotkins, would the effect of that and the effect of the encouragement of diesels, would that help to take care of the lower grade residue from the crude oils, for the benefit of the refineries in the industry generally?

MR. PLOTKINS: No, only for the public's benefit. Any time that you allow more competition ---

MAJOR LIPSETT: No, I am on another point altogether. There is difficulty I gathered in handling the residue of the crude oil.

MR. PLOTKINS: Heavy products in the topping plant, in the topping plant only.

MAJOR LIPSETT: That applies to the topping plant only?

MR. PLOTKINS: Yes, because there is no difficulty in the cracking plant; in other words, what I am trying to say is this, that you can limit competition to cracking plants but if you do that you will gradually have the same condition as existed in the last six or seven years in this province in leaded products, whereas if you have the small individuals with the topping plants, they will exert their proper influence and legitimate influence on the cracking plant, the markets of the cracking plant and on the markets generally.

MAJOR LIPSETT: Would these small topping plants then, bringing it down to them, would they be benefited by keeping the diesel fuels free from taxes.

MR. PLOTKINS: They would benefit and that is the only way they could exist, the only way the topping plant can continue to exist in this province would be to remove the tax and let the natural conditions develop the market for the distillates and diesel.

MAJOR LIPSETT: That is what I was trying to put to you, perhaps not very successfully, would the abolition of the taxes enable the topping plant to compete better?

MR. PLOTKINS: Well, it would enable them to

compete and exert their proper weight on the market of competitive products.

MR. FRAWLEY: We are talking about topping plants, as Charlie McCarthy might say, where are there any topping plants?

MR. PLOTKINS: True but that is what I am fighting for all the time, is for competition, unrestricted competition on the marketing system of the oil business.

MAJOR LIPSETT: Is there not a small plant at Red Deer and a small plant just outside Calgary?

MR. FRAWLEY: There is Mr. Munroe. The one at Red Deer has gone, I understand.

MR. PLOTKINS: Yes, dismantled.

MR. FRAWLEY: The one at Lethbridge is gone.

MR. PLOTKINS: No, there are two topping plants still in existence and if the law was changed there might be two or three more start up and they would not hurt anything if they exerted their proper influence on the price level.

MR. HARVIE: Your suggestion would be to give them the benefit of the 6 cent tax?

MR. PLOTKINS: It would give them the benefit because originally the tax was intended as a road tax and not an agricultural tax. It is advisable to help the farmer to reduce his cost and I know what is going to happen when everybody has tractors, high compression tractors, and he is forced to depend on "Q" and Ethyl grades, he is going to pay more. There will be more competition, it cannot help it; in other words I am going back to the same argument with the refiner, the same as the marketer. The marketer, sitting in his office, operating in a certain area, can market away

below the bigger company can, and the refinery operating in a local section can refine cheaper than the bigger company can, with the result the bigger companies are restricted to keeping up prices. They have to face that and the more there are, the more they have to face and the lower the price is and the better products for less money that the public gets.

MAJOR LIPSETT: Would you get that type of marketer which you mentioned, would you get him to go away up into these isolated places where they are now getting service by some of these larger organizations, you heard them say they looked on it as their responsibility to provide gasoline in every part of the province.

MR. FRANLEY: Humanitarian, you might call it.

MR. PLOTKINS: Well, Mr. Chairman, in business it is all a question of figuring out what it means in profit. If I am going out to spread over the province because I can see a bigger profit than if I were spread over half it, either a bigger profit or some other benefit. Now the big benefit in being spread out over the province so far as we are concerned and so far as any other marketer is concerned is not to render service to somebody exactly, it is to reduce the risk because if I am marketing in a limited area I am subject to crop conditions in that one area and I am liable to have a big expense in those crop failure years and not make any money but if I am spread out over the whole province, on an average, I get my proportionate share over all, and I am certainly in a better position to stay in business and to make a normal profit, and the other companies do the same thing; so that the benefit so far as , - another thing, so

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far as not being able to give service to the remote areas, I do not see that point. If conditions will permit the starting of some small topping plants and small marketers, they will start just as easily in the Peace River as they will down here so long as there is a market at a profit available and in fact, as I have pointed out under our operation we are actually going out, we permit the backwoodsman to get gasoline cheaper than he could get it through the major company system because

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Because he cannot come to the bulk plant we go to him, through our trucker agents, and he may live 75 or 50 or 60 miles away, or away up in the James River country, but we reach him. The Imperial Oil agent does not reach him. He only probably comes to town once a year. So that the question of going after the market is not a humanitarian proposition. It is a business proposition. We go after it if it is profitable, and if it is not we do not, no matter if it is a large company or a small company.

THE CHAIRMAN: In drawing your line for taxation purposes and defining taxable gasoline, how would you do it? By octane rating or what?

MR. PLOTKINS: I would not exempt any gasoline. In the United States, in Montana for instance, tractor distillate is exempt, and Diesel is exempt, but gasoline is not, whether it burns in a tractor on the farm or anywhere else, as I recall it. But in any case there is a definite distinction and the distinction is defined as gasoline.

THE CHAIRMAN: Yes, and how would you define it?

MR. PLOTKINS: Flash. Initial end point. In fact if we have standards they are defined just naturally, so that would take care of itself. And another thing that is for efficient co-operation between industry and government to determine what is gasoline and what is distillate and what is Diesel, what is taxable and what is not.

THE CHAIRMAN: It is an interesting proposal as a solution of the tax evasion trouble, whether it be sound or not.

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MR. FRAWLEY: Do you think it would cure the tax evasion?

MR. PLOTKINS: No, it won't cure it. Well, yes it will.

THE CHAIRMAN: Why wouldn't it?

MR. PLOTKINS: There is absolutely no evasion possible.

THE CHAIRMAN: The oil company has to collect for its "Q" and Ethyl and Third Grade.

MR. FRAWLEY: Mr. Plotkins goes so far as to be advocating a tax of 7 cents on.....

MR. PLOTKINS: I am not saying 7 cents, I am saying a tax.

THE CHAIRMAN: A uniform tax?

MR. PLOTKINS: A uniform tax.

THE CHAIRMAN: On Ethyl, "Q" or Third Grade?

MR. FRAWLEY: On any gasoline. Well Third will take it all down to gasoline used on the farm in agricultural work.

MR. PLOTKINS: Or anywhere.

THE CHAIRMAN: No difference. Everything else tax free?

MR. PLOTKINS: The rest of the fuels.....

THE CHAIRMAN: There is certainly no escape if you charge the oil companies with the responsibility of collecting that tax. They have got to pay it so they will probably see that they get it.

MR. HARVIE: But you will be up against the blending problem again.

MR. PLOTKINS: What advantage would there

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be to blending?

MR. HARVIE: The same as it was when it was adopted in the old days.

MR. PLOTKINS: No.

MR. COMMISSIONER LIPSETT: I did not gather that it was done.....the suggestion was that the refiners did it. But I understand a man bought so much gasoline and so much Diesel and mixed them and sold them as gasoline.

MR. PLOTKINS: The dealers did it.

MR. HARVIE: The farmers used a blended product for equipment that normally should only use a taxable product.

MR. COMMISSIONER LIPSETT: If you blend it and make it higher than the minimum rating then it has to pay the whole tax.

MR. HARVIE: Not if he blends it on his farm, there is no way of checking it.

THE CHAIRMAN: He has still paid a tax on everything that is intended to be taxable that he got. What he does after that, he can do with it anything he likes.

MR. PLOTKINS: Yes, he has paid the tax on everything that is taxable. The only thing that will happen is that he will use a little gasoline to start his engine and he will pay a tax on it just the same as those who use a high compression tractor. He certainly cannot escape the tax.

THE CHAIRMAN: He has to pay that on everything he is using.

MR. PLOTKINS: That is right and the Government feel that they have this machinery pretty well

working,

THE CHAIRMAN: For getting the taxes?

MR. PLOTKINS: As far as the taxes go.

MR. FRAWLEY: More than they used to get.

THE CHAIRMAN: You did not think very much of their machinery in some of the respects, other than collecting money.

MR. PLOTKINS: Collecting money. Insofar as the gasoline tax I think they have done a pretty good job. With respect to their interpretation of the laws and their need for these laws I do not quite agree.

THE CHAIRMAN: Well we will start again in the morning, Mr. Plotkins.

(At this stage the Hearing was adjourned until 10.30 A.M., 14th December, 1939.)

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The Province of Alberta

IN THE MATTER OF THE PUBLIC INQUIRIES ACT

—and—

IN THE MATTER OF a Commission, dated the 12th day of October, A.D. 1938, to inquire into matters connected with Petroleum and Petroleum Products

Commissioners:

The Honourable MR. JUSTICE McGILLIVRAY
(*Chairman*)

—and—

L. R. LIPSETT, ESQ.

Session:

CALGARY, Alberta DECEMBER 13th, 1939

VOLUME 149

FINAL ARGUMENT

THE CHAIRMAN: Mr. Plotkins, something is always intervening to delay you, for which we are again sorry.

MR. PLOTKINS: Now we were dealing with the possibility of eliminating the evasion of taxes and getting it down to a better working basis. I would like to go back and present the argument and the position I have already reached from the start. My position has not changed. I thought it out then on the basis of experience and it is apparently by the last few years' experience definitely proven.

In 1932, in February, in fact in January, 1932, the Province of Alberta and the Province of Saskatchewan were faced with conditions with regards to the collection of taxes. At that time they did not know very much about it and there was not very much gasoline consumed but yet they felt that they should have some orderly methods of imposing a tax and collecting it, so Mr. Dean, R. G. Dean at that time was Inspector of Revenue for the Department of Lands and Mines and another gentleman from Saskatchewan, went around to the different companies and asked for their views.

Now I submitted my views in writing. They are very short and in that submission it appears that the Government took steps to carry out practically all of these submissions that I made and I wrote Mr. Dean. At that time I was not in contact with the officials of the Department, so I wrote to Mr. Dean

about it and here is the letter:

"Dear Sir:

" In accordance with your
"request we herewith submit our written view re-
"garding regulation of the sale of petroleum
"products in this Province, definition, inspection
"and taxation.

" To make the subject easily
"digestible, it has been divided into four section;
"licensing, technical definition, inspection tax-
"ation and revenue.

" Licensing: To permit '
at that time there were no licenses, it was a rather more
or less hit and miss matter.'

" Licensing: To permit the
"reporting to the Government authorities of all
"petroleum products, producers, refiners, distributors,
"jobbers and retailers should be licensed and required
"to report all production, sales purchases, man-
"ufacturers, transfers within a company from station
"to station or one Province to another.

" Definition: To intelligently
"arrive at a uniform basis of accounting, and in-
"cidentally for the protection of the consuming public,
"a technical definition of all petroleum products to
" be made or adopt those already in existence by the
"United States of America Bureau of Standards, or the
"British Admiralty Specifications, until such time as
"the Canadian Bureau of Standards give us a Canadian
"basis. This would prevent the present multitude of

"distillates which although are being sold tax "exempt, are causing the public a loss through "rapid deterioration of the motors in their "automobiles, probably equal or greater than the "saving in tax.

" Another effect of proper "definition of all petroleum products would be to "properly regulate the shipping by rail and truck, "Provincial, Inter-Provincial or from the United "States of America. This would have the effect of "automatically classifying all shipments of pet-"roleum products according to law."

Now I want to remark, that I see no objection to the Government, in fact I think it is one of their duties, to guarantee quality, the same as they do with eggs, the same as they do with wheat, the same as they do with many things, why, because the Government body is in a better position to do it; in fact it has to be policed and the only people who can do it is the Government.

THE CHAIRMAN: You heard some of the objections, I am very much interested in the subject you are addressing yourself to, you heard some of the objections put before us about the great difficulty in policing.

MR. PLOTKINS: Standards.

THE CHAIRMAN: Yes, and that in the event of the policy not being adequate the honest fellow suffers greatly because of the non-compliance of the man who is not of as much moral worth.

MR. PLOTKINS: That is true.

THE CHAIRMAN: What do you say about that, Mr. Plotkins.

MR. PLOTKINS: I have a very simple answer to that. We have the evidence of the Ethyl Corporation, which probably are considerably fussier than any Government ever will be and they found no difficulty in enforcing their standards but they have a well thought out plan based on experience and they control it at the source. Now the Government can control the policy at the source and the minor infractions which might happen to a few dealers would certainly not amount to much and could be effectively policed by the companies themselves, the same as the companies are now called upon by the Ethyl Corporation to police their dealers in the quality of the Ethyl products.

THE CHAIRMAN: Another thing I wanted to ask you, Mr. Plotkins, if I may just go back to the matter you were speaking of yesterday, which was of some interest, you were speaking of eliminating taxation to the benefit of farmers.

MR. PLOTKINS: Eliminating taxes.

THE CHAIRMAN: Eliminating taxes for the benefit of the farmers on petroleum products other than Ethyl, "Q" and Third Structure.

MR. PLOTKINS: That is right.

THE CHAIRMAN: And that probably would provide a simple method of doing away with the evasion of taxation.

MR. PLOTKINS: Yes.

THE CHAIRMAN: But is it a backward step, is it possible that the farmers by the use of high grade gasoline, high compression engines, are doing that which is advantaging them in their operations and that we would be penalizing progress in connection with farming. Now what is your view about that?

MR. PLOTKINS: On the face of it that is the way it looks like. That is the first approach, on the first approach that is the way it looks but actually when we increase the cost of one fuel as against another fuel because one is taxed and the other is not, the manufacturer of that equipment has to face the situation, the technicians in that particular industry have to face the situation, the same as they did in the Old Country, where they have heavy taxes on gasoline, where they changed the shape and performance of the motor car. Now in the truck and tractor industry it will have its influence and progress will probably be accelerated in the high compression engine instead of retarded because the reason we have had such wonderful advances in the automobile industry is because of excessive taxation. It has forced the development of better and better engines; in other words because of only so much money available to the average consumer to buy a car and operate it, it was the duty of the automobile manufacturer to give them a better car. It was the duty of the oil industry to give them better oil for their money. Now the same today in the case of a tractor, we will take a kerosene

tractor and the diesel tractor and one manufacturing a diesel type, another manufacturer manufacturing a high compression type, now I want to point out there that because of the volume of high compression engines in the modern tractor today and what I mean by that is the average automobile manufacturer is now adapting his automobile or truck engine to tractor use and the result is because of the increased throughput, the volume of engines, he is able to sell his gasoline tractor for less money than the man who is manufacturing diesel tractors. It is very easy to understand if a manufacturer manufactures 500,000 engines, 480,000 of them for automobile or truck use and 20,000 are going into tractors, that man is in a much better position to undersell his competitor who is making diesel engines or some other kind of motor with only 25 or 30 thousand models. Now that is the situation today and the result is that, while it is true the tax would handicap the high compression engine or tractor, the farmer probably would buy the tractor just the same if the price and the convenience were sufficient to offset the tax, so that it is very easy to come to conclusions on the face of facts but there are so many interlocking conditions that cause the average man to act according to his own particular circumstances, and in the question of high compression tractors my opinion is that just the same as the diesel tractor and the diesel truck is advancing in the face of high costs per unit, in the face of other disabilities, just the same the farmer will adapt himself and judge from time to time whether it is wise for him to buy a high

compression tractor or to buy a diesel tractor or a distillate tractor. Now in the United States where there is no tax on the heavy distillates, it seems there is very little to choose from between the diesel tractor and distillate tractor. Now I have not made a study of the taxes in the United States but I surmise in some places there is no rebate, do you know of any, Mr. Frawley.

MR. FRAWLEY: No.

MAJOR LIPSETT: Would that be subject, Mr. Plotkins, to this critisicm, that if the object of the reduced user is to benefit the farmer, that when you are discriminating between two sets of farmers, you are discriminating between the farmer who uses a tractor, a diesel tractor and the farmer who uses a high compression tractor.

MR. PLOTKINS There is no discrimination, Mr. Commissioner, so long as he has a choice. If you compelled him to buy one or the other or you made the conditions where he could not help himself, that he was forced to do one thing or the other, or one of them and not the other----

THE CHAIRMAN: But you penalize him if he gets what he thinks is a better one.

MR. PLOTKINS: I would not say you do.

THE CHAIRMAN: You do not compel him to buy it but you put a penalty on him for so doing it.

MR. PLOTKINS: Now we have a situation in Canada where only the Province of Alberta taxes distillate.

Now the manufacturer of tractors has to deal in Saskatchewan or Manitoba or in British Columbia and the volume of the tractor business in Alberta is probably too small for him to consider the situation here so that the farmer in Alberta is up against the thing that he has to weigh the advantages or disadvantages under the present system here of buying this tractor or that tractor and if all the Provinces and in the United States the situation was identical with Alberta it might make a new situation and then it might be there would be reasons why the farmer would want to stay with gasoline as against distillate but in all economic matters, freedom, choice, determines the trend of design and improvement with the result that if we are discriminating in the shape that we tax gasoline for use in high compression tractors, the manufacturer and the farmer that uses it, will find ways and means of overcoming it or adapting themselves to it and it will take care of itself.

Now what I object to in all these laws is that it stops the man from adapting himself. He is hide bound. He has to do this and he has to do that and he cannot use his own judgment, he cannot adapt himself to changing conditions.

Now in connection with these taxes I have dealt with, in connection with these taxes and the other various angles, in the last five years, I have written two other short letters on the subject and I think I have covered it, after giving it considerable thought:

"Inspection: Legislation "to provide the Government with the power to de- "mand the proper accounting from all licenses, that "is, so as to have all records of purchase, man- "ufacture and sale, with the right to inspect "original records and documents at the head offices "of all oil companies, which are now mostly outside "of the Province. A uniform method of reporting "distillations recoveries from the various raw "materials should be imposed on all refineries. "Legislation to provide a sufficient number of in- "spectors to be graded into three classes, the "first class to be auditors and cover the large "refining and distributing companies with a training "and experience equal or superior to the men they "will be called upon to deal with.

"This class will require "extremely capable men if the object to be obtained "is to be accomplished without disruption and "antagonism, and fit the highly technical and "varified nature of big company operations. The "second class of auditors will require the same "general training and experience but will be "called only to deal with firms of a domestic "character. The third class will be plain inspectors "to take samples and check individual retailers or "distributors, a limited training in the essentials "of the industry will equip them for this work."

Now since then, as I have expressed a few minutes ago, I have come to the conclusion that with the industry more and more into well organized channels it is much simpler to control that at the source and only occasionally work in the field.

"With regard to the International companies proper accounting from the American head offices can be enforced through the medium of the Canadian Customs as it is at present being done with other goods, e. g., with regard to dumping duties."

In all of this I have never suggested that they should control business but I am suggesting ways and means of them getting revenue under proper administrative methods.

"Taxation and Revenue:

With a proper definition of all products an inspection fee based on the market value but rounded out in parts of a cent - 1/20, 1/8, 1/4, 1/2, etc., can be imposed on all products, and this fee if properly enforced will not greatly affect the selling price and undoubtedly will react to the ultimate advantage of the consumer through the product being up to a standard quality, whereas, now with no Government standards, inferior products can be sold in competition with standard products.

It is to be kept in mind that U. S. A. standards, if used, should be adapted to Provincial conditions, and this can only be satisfactorily arrived at by agreement among the oil companies, the public interested and the Government. The variations to be within the restricted limits of the American standards.

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"An inspection fee of 1/20 cent per gallon on all "Q" oils and other low grade products that contain mostly residue and are known as fuel oils, or any amount sufficient to insure proper inspection and the revenue desired by the Government to off-set a decrease in road tax.

"An inspection fee on lubricating oil, grease, gas oil, signal oil, kerosene, turpentine substitutes and other solvents, cleaners, benzine, naphtha, aviation gasoline, and natural gasolines or naphtha when used by refineries or jobbers for blending purposes, graduated according to value with one cent inspection tax on kerosene to offset the loss on rebated gasoline.

"A road tax on gasoline: The present tax of 5 cents per gallon in our opinion is the maximum that can be enforced with the good-will of the public. To prevent evasion and reduce administration costs we believe that no refund should be made to farmers, and when used for industrial and aviation purposes, a simpler method would be to issue permits defining the uses and quantities to be required and sell the gasoline with the inspection tax only added."

Since then the aviation industry has apparently accepted a tax.

THE CHAIRMAN: What are you reading from?

MR. PLOTKINS: This is a letter that I addressed to Mr. R. J. Dean, on February 12th, 1932. The

THE CHAIRMAN: You are giving that to the Reporter, are you?

MR. PLOTKINS: Oh yes.

"By an account from each permit holder for the previous year, a full check can be obtained and no refunding machinery required.

"The farmers can use kerosene in all tractors with practically the same advantage as gasoline and this would create no hardship whatsoever, the present methods of rebates to farmers is unfair and unworkable.

"To prevent confusion and simplify collections of all fees and taxes, these should all be collected at the source of the respective products, or on importations, with an agreed allowance for losses through spillage, handling, evaporation, industrial users, and credit losses, also a proper allowance for bookkeeping and other costs of the refineries and oil companies should be made in keeping with the cost to them after consultation.

"This method of collection would not burden the public with any red tape but would subject all products to proper inspection through licensing all dealers or distributors.

"To conclude, another aspect of the situation is that proper regulation and knowledge by the Government officials of the Petroleum Industry, would tend to bring down prices to the public as a number of present practices in merchandising would disappear and would have the further effect of discouraging the hasty and unprofitable multiplication of service stations and outlets.

"Trusting this will be the means of further scientific studies of the subject, as we have only approached the matter on a general basis,

Yours very truly".

Now, Mr. Manning, in January, 1936, asked me to make some representations and arguments and I presented these on the same subject:

"Present System Unsatisfactory:

1. Evasion is too wide-spread due to:

(a) blending with untaxable products by truckers, service stations and dealers,

(b) rebates on taxable products that find their way to the service stations and garages,

(c) rebates to farmers and others on products consumed in automobiles and trucks, and

(d) the use of butane gas in pressure bottles."

Now, that has not become wide-spread. It looked for a while like it might and that would have been another source of evasion, But I won't deal with that now.

"The highly profitable nature of the business made possible by tax evasion has led to wide-spread organized illegal distribution of products on which the tax has been rebated or illegally blended.

"It tends to dislocate the normal manufacture of the refinery products by creating an abnormal demand for the high gravity gasoline that will absorb the greatest quantity of non-taxable products, which, as a result, produce a product on which part of the tax has not been paid and is then able to successfully undersell the product that has paid the tax in full.

"With a 7 cent tax and depressed economic conditions, tax evasion is highly profitable and wide-spread. I estimate 20% of the actual consumption escapes taxation.

2. Suggested Remedies:

(a) Establish a Provincial standard for all petroleum products starting with fuels: This should divide

the products along broad lines into two grades of gasoline, standard and second grade; two grades of tractor fuel: - tractor kerosene and Diesel fuel. Specifications for each of these fuels should be such that would meet average requirements for efficient operation for Alberta conditions under present sources of raw products as well as low cost of manufacture.

(b) The present lack of legal standards causes widespread fraudulent adulterations resulting in considerable loss to the public in increased consumption and cost as well as deterioration to the motorist."

I want to stop there and make a remark. The average major company owns its equipment.

(Page 16,600 follows.)

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THE CHAIRMAN: Owns what?

MR. PLOTKINS: Owns its equipment manufacturing company. The Imperial, for instance, owns the G. & B., the Gilbert and Barker Manufacturing Company that manunfactures pumps, tanks and so forth. The British American owns the Service Station Equipment Company. Now, as probably this Commission has heard, there are all kinds of service stations but it is profitable to have a lot of service stations, apart from the question of selling gasoline. There is a tremendous amount of profit over the years has been made through the sale of equipment.

THE CHAIRMAN: Mr. Frawley, there is an angle here that we have not heard of before. Mr. Plotkins is suggesting, in argument it is true, that both the Imperial and the British American own the factories that make the station pumps and so on.

MR. FRAWLEY: Own the factories that make the pumps?

MR. PLOTKINS: They own the companies.

MR. FRAWLEY: Do they own the Bowser?

MR. PLOTKINS: No, I did not say the Bowser. I said that the Imperial owned the Gilbert & Barker and the British American own the Service Station Equipment Company.

MR. FRAWLEY: They own the company that supplies their pumps. They do not control, The Standard of New Jersey does not control the pump business generally?

MR. PLOTKINS: No, I am not suggesting that. I am suggesting this that-----

THE CHAIRMAN: We have spent a lot of time on service stations and now we hear the suggestion that, perhaps,

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it is good business to have a lot of service stations, from a wholly different point of view than the amount of gasoline sold in that you are selling equipment every time you set up a service station.

MR. PLOTKINS: And that equipment, Sir, runs into a substantial sum for each service station. So that if we reduce the number of grades it will mean a reduction in the cost of equipment and a reduction in cost to the public.

MR. COMMISSIONER LIPSETT: Mr. Plotkins, how is it known that these companies really own these equipment manufacturing companies?

MR. PLOTKINS: How is it known?

MR. COMMISSIONER LIPSETT: Yes?

MR. PLOTKINS: Well, they have published the fact. The Imperial does not publish it. The Standard Oil of New Jersey in the list of companies under their control shows the Gilbert & Barker Manufacturing Company, somewhere down in the States, 100%, in their report. The British American probably does not show it in their prospectus, but I know, I was in close touch when it was originally formed, with the Service Station Equipment Company, and I know by experience and I know by knowledge that the British American owns or controls the Service Station Equipment Company, which, by the way, is a very large company.

MR. FRAWLEY: Are all the British American pumps made by the Service Station Equipment Company?

MR. PLOTKINS: Not necessarily, any more than the Imperial buys all Gilbert & Barker's pumps, for various business reasons. But in the main they are not going to buy from someone else unless they get back some profits.

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MR. FRAWLEY: Well, we will take a look to satisfy our personal curiosity.

MR. COMMISSIONER LIPSETT: And the inference you wish to make, I suppose, is that while a service station may appear in the books at a figure, that is a figure of cost plus whatever profit is made by these controlled companies?

MR. PLOTKINS: Certainly. I am suggesting this simply, that in the past the major companies have attempted to put a pump on every corner. Why? Because it was profitable, apart from the question of price to the public or anything else. That is because in selling the equipment there was a profit to the equipment company. And, incidentally, it curbed competition because the smaller companies cannot duplicate these investments. They could not carry the weight. They had to buy pumps from the competing company. And pumps at the start were sold as high as six hundred and seven hundred dollars. To-day, through the fact that independent pump companies have got into the field, prices have come down, but they are still substantial. In fact, they are outrageous. For this reason, that the pump manufacturing company is shut out from the business unless it be through the operating companies, through the operating oil companies. If I am an individual and I want to buy a pump or a tank, in fact to-day, I cannot even start in business with one, I have to have three because there is at least three grades of products. I need three pumps and three tanks and an air compressor and a lot of equipment, and on the average to-day with computers probably it would cost $2500.00 at least. If I go to the manufacturer he is not going to sell me. He is going to refer me to the oil company.

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Why? For this reason. I have only so much money to put down. I cannot pay cash. The company won't sell me except for cash, or if they sell me it will be for 12 months, which is a condition I cannot meet. But the oil company will sell me on a 5-year basis. So that the effect of it is that the manufacturer does not deal with the user of the equipment. He deals entirely through the oil company. I would not say entirely, but 99½%. Now, what does that mean to the independent distributor or the independent refiner that is in the business trying to get his share of the market. It means unless he is able to face a big capital investment, which is on the other side deliberate, to create a competitive situation, he cannot go out and get volume. Now, it is because of the subtle factors that all these tax laws and codes and fair practices and a lot of other things, artificial conditions that Governments try to impose, won't work, because they are met by other subtle factors and the companies in question keep their position through another method. I do not find anything wrong with that. That is a human trait. But I do believe it is no use trying to cure it by legislation. We will have to cure it by natural laws and the natural laws are to-day are such that if the small fellow, if he is left alone, he is going to try and will succeed in overcoming these difficulties. What am I doing to overcome the difficulties. Five years ago I organized an engineering company and a manufacturing company, where I am making tanks, pumps and compressors. Why? Because I can make them for one-half or less of what I have to pay otherwise. The result is that if I want to go and branch out I will put up service stations to meet that competition.

MR. FRAWLEY: Are you making these fancy pumps

that click the number of dollars?

MR. PLOTKINS: No, I have not run to fancy pumps yet. But we are getting there. I am getting a staff of engineers working. There is nothing impossible to make them. The competitive situation compels me to do these things if I want to stay in that business and meet that competition.

THE CHAIRMAN: It would not financially advantage a company like the Imperial or the B. A. to buy pumps from themselves or from their wholly-owned subsidiaries other than if their competitors had to buy from them or someone else who kept up the price and they would be in a better competitive position. That is what it would amount to, is it not?

MR. PLOTKINS: Yes. And another thing, it hampers business because of its closely controlled nature.

THE CHAIRMAN: Major Lipsett suggests although they might sell it to themselves at any price they like without advantage, that does not follow they might not sell it to the service station man at a very high price as compared with the price at which they bought.

MR. PLOTKINS: No, they do not sell to themselves. It is a peculiar-arrangement between the equipment companies and the oil companies, because of the fact that the oil company controls the transaction and because of the further fact that in Canada the equipment manufacturers are limited to practically the oil companies' subsidiaries; because in the United States there is a wine gallon and in Canada there is an Imperial gallon, and we cannot buy a competitive pump in the United States. We must buy it in Canada. It means then that the prices are held pretty closely. In other words, the prices are reasonably high. The same as any other business where there

is close control. The result is that while an oil company does not make any money - in fact at the present time the oil companies handle the pumps and equipment for nothing - it is the pump manufacturers that make the money. Why? Because, well it is a simple matter of taxes. In my estimation we have to meet the same situation. We certainly want to spread the profits. We do not want them all in one company. So in the case of equipment, when a company buys a pump it buys and resells it at just barely the carrying charges. But it pays cash to the manufacturer and sells them on five year or longer terms to the users.

MR. COMMISSIONER LIPSETT: Is not the suggestion that the manufacturing subsidiary might make a pump which would cost, say $200.00-----

MR. PLOTKINSS No, not anywheres near it.

MR. COMMISSIONER LIPSETT: I am only taking a hypothetical figure. And that that manufacturing company would sell it then for $400.00 to the refining company, the oil company.

MR. PLOTKINS: That is right, to the marketer.

MR. COMMISSIONER LIPSETT: And the marketing company sells it to the service station for $400.00 plus some reasonable margin.

MR. PLOTKINS: Well, no margin. Just a carrying charge.

MR. COMMISSIONER LIPSETT: No margin at all. But in the meantime, the marketing company has, through its subsidiary made $200.00 profit?

MR. PLOTKINS: That is right.

MR. COMMISSIONER LIPSETT: And has that profit as against any competitor such as yourself, who has to go and pay $400.00?

MR. PLOTKINS: That is correct. I am not suggesting there is anything wrong with it.

MR. COMMISSIONER LIPSETT: No, but I was trying to get the argument.

THE CHAIRMAN: What I am concerned about is whether it be the fact. We have had interesting discussions with Mr. Halverson and others, and Mr. Miller, on service station griefs, but there is no mention of this situation.

MR. PLOTKINS: If you will get the history of the Service Station Equipment since 1931 you will find that from a very small capital it has now built up into the millions. Now, if you will get the history of the other companies you will find the same situation. And that speaks for itself.

MR. FRAWLEY: I would like, insofar as this be afforded for my part, like all other things, I think there should be considerable latitude about the way of informing the Commission, even if we have more or less officially closed the evidence, and it would be a very simple thing for Mr. Nolan and Mr. Harvie to make a statement to the Commission about this matter. The rather important thing I see in it, if it is to be developed, and something I would like to know about it for my own information, is whether it is one more bar to competition. Whether it in any way can be regarded as a further control on the retail outlets.

(Page 16,607 follows.)

If the equipment companies in the nature of things cannot be expected to finance these dealers that is one thing but if the Imperial Oil and the British American, who are very glad to finance them, then, that is one way of freezing competition.

MAJOR LIPSETT: Is there not the wider question, Mr. Frawley, and it is this that the capital that we have been dealing with in service stations and in equipment of that sort as appears on the books of the major companies, may not be actual out-of-pocket capital that they have spent by reason of the fact that half of that capital or whatever it is may be profit which they obtained through a subsidiary manufacturing plant, is that not the real importance of it as regards the marketing picture which we have got.

THE CHAIRMAN: And the further point that the influence in building service stations may not be wholly what we are led to understand it was, namely to get turnover but to sell equipment, which on the face of it is not being sold at a profit at all but which in truth shows an enormous profit if this statement is true. Now, I say, if this statement is true and it would seem that Mr. Plotkins is well-informed.

MR. FRAWLEY: I feel badly about it. I think certainly we should have been told about it and I only blame myself and now I might ask Mr. Nolan and Mr. Harvie to tell us about it.

MR. PLOTKINS: Mr. Chairman, I am not offering this as evidence. I am merely pointing these things out in argument to show the futility of a Government Body attempting to take care of everything.

MR. FRAWLEY: Let there be no mistake about it. I intend to talk considerably about Government intervention and I want to know the foundation of this. If there is anything in this I would like to know about it. I do not see what you mean when you relate it only to Government intervention. I want to know what the facts are and I cannot discuss Government intervention until we know.

MR. PLOTKINS: Today it is pumps. Tomorrow it may be something else, so if you are going to keep track of everything that determines competition or acts on the competitive system, you are going to have to do a lot more work than just set up one Body.

Standards for motor fuels ---

MR. FRAWLEY: Before the subject is left though, I wonder if there should not be some intimation from the Commission as to where we are.

THE CHAIRMAN: I think Mr. Nolan and Mr. Harvie, I mean from your own standpoint, it might be well to inform yourselves and make a statement if you care to. We certainly invite you to.

MR. NOLAN: Yes, I would like Commission Counsel to write me a letter and tell me what he wants to know. We have been doing it that way and that is the most convenient way to do it.

THE CHAIRMAN: It should be done by wire this time because we hope to finish and I gather you would not be adverse to that either?

MR. NOLAN: Oh, no.

THE CHAIRMAN: And that same applies to you, Mr. Harvie?

MR. HARVIE: Yes.

THE CHAIRMAN: I mean I think it is something you would want to deal with.

MR. HARVIE: I propose to deal with it before we finish.

THE CHAIRMAN: Yes, Mr. Plotkins.

MR. PLOTKINS:

" Standards for motor fuels would "tend to reduce the price per gallon to the public "as a less number of grades would reduce the amount of "handling equipment in pumps, tanks, etc., and evaporation "both at refineries, bulk stations and service stations "resulting in a greater turnover per products which means "reduced price, which I estimate at least 1½ cents per "gallon. It would also tend to eliminate this unjustified "wide spread in retail price of fuels such as Turner Valley "gasoline at 25 cents and Three Star gasoline at 32½ cents "including tax at Calgary.

" A uniform tax on all fuels with "no exemptions or rebates:

" I estimate that if all fuels were "taxed and evasions were eliminated by proper accounting "to the Province of all production manufactures and "imports that a tax of 4 cents per gallon would yield "considerably more revenue than that at present.

" While 4 cents would not doubt "be considered a burden on the people that now receive "rebates, the introduction of standards and the elimin- "ation of tax evasion will, in my opinion, wipe out "illegitimate and illegal competition reducing the cost "of distribution by about 2 cents per gallon as well as

"improve the quality and increase efficiency of the "average automobile or tractor fuel at least ten per "cent or in all an average of another 2 cents per "gallon, a saving equal to the 4 cent tax."

I pointed out that in the distribution is where the big saving may be made in reducing the price to the public and there is where there has been no scientific approach to the subject. In refining and in production, it has certainly been in the hands of scientists. In the marketing it has been in the hands of wild sales managers going out to get gallonage at any price and their only curb was the pressure of the company, the ability to stand it.

" If we concede the right of the "Province to levy taxes on fuels for general revenue "purposes, exemption of any particular class of uses "cannot be justified either morally or legally and "experience has proven the impossibility of preventing "evasion under the present law. While I protest the "tendency of the Province to consider petroleum fuels "a legitimate means of raising a large part of their "revenue, the authorities should endeavor to give "consideration to the industry in working out methods "and rates of taxation that will not complicate the "already complex problems that it has to face and I "respectfully suggest, that when the present Act is "changed that a draft of the new Act be submitted to "the representatives of refineries and marketers as "well as to the Alberta Automobile Club for their con-"sideration and an opening meeting called in Calgary

"where the largest number of interested parties reside,
"for a review of such proposed new Act with the
"Provincial Secretary and Department officers.
" Such procedure would result in
"a considered, workable and equitable law with the
"general interests protected by an open meeting. Another
"aspect of the situation is that the present uncertainty
"in regards to fuel taxes is a burden on my business as
"I cannot decide what products to manufacture until the
"new tax basis is definitely known, as it depends on the
"tax structure what products will be in demand next
"spring and as we usually begin refining the last of
"January or the first of February, we are at a loss to
"know what to manufacture."

Now for a period of three or four years we never knew what the tax was going to be and on what it was going to be. We did not know whether it was going to be on this product or any other product and it certainly disorganized the small company like ours and in fact it kept us back.

"In conclusion I wish to say that the present law is
"unsatisfactory and evasion and blending just about
"succeeded in wiping out my business last fall, the
"increased distribution of Turner Valley high gravity
"plant naphtha resulted in widespread blending and
"tax evasion, and unless there is more protection for
"legitimate business I see no other course open to me
"but to protect my business to the best of my ability."

What I mean there is, what I done several years before if the Government couldn't handle it I

would have to handle it myself, go out and meet the issue.

" Having a refinery and marketing the "products practically all through the independent trade, "I am much more vulnerable to the present tax evasion "than the major companies.

" I trust that you will give this "matter serious consideration."

THE CHAIRMAN: Now what is your concrete suggestion about taxation, Mr. Plotkins, had you the power, what would you do?

MR. PLOTKINS: I am suggesting there that I feel the best way to arrive at the remedy is to call representatives of the industry together.

THE CHAIRMAN: I get that perfectly but have you any ideas of your own?

MR. PLOTKINS: As to what to do?

THE CHAIRMAN: Yes.

MR. PLOTKINS: I have suggested it, I have suggested there, I think, in my next letter, I have given concrete suggostions, I do not know, I will look and see, that is the latest letter, the last letter, yes, I have offered solutions in this last letter.

" Alberta Fuel Oil Tax exemption "coupons".

I wrote a brief, because they were bothering us, bothering us seriously and interfering with our business.

" A review of the economic effect "on the operation of independent refineries and independ- "ent marketers.

I. L. [illegible]

would have to handle it myself, [illegible] the [illegible]

" [illegible] a [illegible] can marketing th

[illegible] unanimously all through the independent [illegible],

" [illegible] tax [illegible]

[illegible] the major [illegible].

" I trust that you will [illegible]

[illegible] serious consideration."

MR. CHAIRMAN: Now what is your concrete suggesti

about [illegible], Mr. Plotkins, in [illegible] power, what [illegible]

[illegible]

Mr. PLOTKIN: I [illegible] [illegible] that I [illegible]

the last way [illegible] arrive at the remedy is to still [illegible] [illegible]

[illegible] industry to [illegible].

THE CHAIRMAN: I see that [illegible] but [illegible] yo

any ideas of your own?

Mr. [illegible]: As [illegible] to it?

THE CHAIRMAN: Yes.

Mr. PLOTKIN: I have [illegible] it, I have [illegible]

[illegible]. I think, in my next letter, I have [illegible] concrete [illegible]

[illegible]. I do not know, I will look [illegible] see, that in the [illegible]

letter, the last letter, you, I [illegible] [illegible] [illegible]

[illegible] letter.

" Albert [illegible]

[illegible].

" I [illegible] a brief, [illegible]

[illegible], [illegible] [illegible] and [illegible]

[illegible].

" [illegible] [illegible] concrete [illegible]

[illegible] [illegible] [illegible] and [illegible]-

[illegible].

" The privileges accorded by "the proper use of the exemption coupons permits a "purchaser of fuel oil as defined by the Statute, "to claim tax exemption of 6 cents per gallon, provid- "ing he submits at the time and place of purchase a "fuel oil tax exemption coupon.

" A farmer on making a written "request to the Provincial Secretary's Department at "Edmonton, stating that he intends to use a certain "quantity of fuels for his farm operations, can obtain "a number of these fuel oil tax exemption coupons "giving him the privilege of purchasing a definite "number of barrels of fuel oil, which can, at the "farmer's option be gasoline, tractor kerosene, or "any other suitable petroleum distillate, and instead "of paying the statutory tax of 7 cents per gallon he "pays only 1 cent tax and in effect takes his own "rebate of 6 cents per gallon at the time of purchase.

" Whereas previously gasoline only "was taxed when used for road purposes, with a provision "for a rebate of all the tax less 1 cent per gallon "when used for farm work, all other fuels were exempt "of provincial taxes. The new method of tax exempting "all fuels, including gasoline when used for farm work "has completely changed the purchasing habit of the great "majority of farmers.

" At the present time with a flat "1 cent per gallon tax on all fuel oils the farmer is "now buying mostly gasoline which he can use in his car, "tractor, truck or pumping engine and as a result, in "the majority of cases uses part of his purchases for

"road purposes in his car and truck on which he escapes "paying the full 7 cents per gallon tax."

Now that makes me think, the farmer today he has a tractor and he has a truck and he has a car and his inclination is to buy one grade of fuel to suit them all. He will be able to pay tax on whatever he likes. Now that is another incentive to buy high compression gasoline as against a distillate gasoline because it means less equipment, less drums, less a lot of other things.

" This condition, brought about "by the new tax structure, has resulted in complicating "the marketing problems of the independent refiner in "Alberta."

MAJOR LIPSETT: Supposing, Mr. Plotkins, that the farmer had not any high compression tractors but that he only had a diesel tractor, how could he evade the tax on the "Q" or Ethyl brand of gasoline?

MR. PLOTKINS: At the present time?

MAJOR LIPSETT: Yes.

MR. PLOTKINS: He has only to give us a coupon. The Government is not there to see whether he has a diesel tractor or some other kind of tractor or to see what he does with it. It is humanly impossible to check all these thousands of farmers.

MAJOR LIPSETT: But anybody investigating it would find out immediately that he couldn't have used the high grade gasoline on the farm at all by reason of the fact that he only had a diesel tractor.

MR. PLOTKINS: Yes, that is true on the face of it. He would, but there are only two men in the Provincial

"[illegible] in his car or truck on which he escapes paying the full 7 cents per gallon tax."

Now that makes me think, the farmer today he has a tractor or he has a truck and he can [illegible] and his inclination is to buy [illegible] them all. He will be able to pay tax or whatever it is. Now that is another incentive to buy high compression [illegible] to operate a distillate gasoline because it means less equipment [illegible], and a lot of other things.

"These conditions, brought about by the new tax structure, are reflected in compounding the marketing problems of the independent dealer in Alberta."

[illegible]: [illegible], Mr. Pitkin, [illegible] hasn't any high compression tractor but that [illegible] a diesel tractor, how could he evade the tax on the [illegible]?

MR. PITKIN: At the present time?

[illegible]: Yes.

MR. PITKIN: He has only to drive [illegible]. The government is not there to see whether he has a license [illegible] their third [illegible] tractor or to see what he does with it. It is [illegible] impossible to check all these [illegible] of licenses.

MAJOR [illegible]: But anybody investigating [illegible] find [illegible] immediately that he couldn't have used the [illegible] of the [illegible] tractor [illegible].

MR. PITKIN: Yes, that [illegible] the [illegible]

[illegible]: [illegible], but there are only [illegible] in the [illegible]

Secretary's Department looking after all the taxes and checking one hundred and one companies and it certainly is beyond them two men to do anything of the kind.

MR. FRAWLEY: There is the matter of the Mounted Policeman.

MR. PLOTKINS: The Mounted Policemen to my experience, feels that it is obnoxious to them.

MAJOR LIPSETT: Is it any part of their duty at all?

MR. FRAWLEY: Of course we have a contract with the Dominion Government to police this Province. Of course they do if they are directed to enforce a situation.

MAJOR LIPSETT: The Statute simply says that a man with a coupon can get the gasoline without paying the tax and I was just wondering if it was any part of the duty of the police to go and investigate what kind of a tractor the farmer was using and so on.

MR. FRAWLEY: If the Department thought that John Jones or any group of John Jones had diesel tractors and were misusing the gasoline which they had purchased, they could tell the Mounted Police, the Mounted Police could be asked to investigate, I do not know, I admit the difficulties of course, the difficulty is tremendous perhaps.

MR. PLOTKINS: They do investigate and they prosecute probably 1/10th of one percent of the cases, relying on probably the lesson to prevent the others from doing it but the situation is very difficult.

" This condition, brought about
"by the new tax structure has resulted in complicating
"the marketing problems of the independent refiner in

[illegible]

[illegible]

[illegible] Impossible! Look [illegible] [illegible] [illegible]

"Alberta. With a consequently reduced market demand "for tractor kerosene and other comparatively heavy "by-products of crude oil refining, these products "have been accumulating in the refiner's hands and "their economic value reduced, and as the market of "heavy by-products go down, producing costs of gasoline "increases.

" This condition has completely "upset economic operating conditions for the Alberta "independent oil refiner and weakened his ability to "compete with the major company in marketing his manu- "factured products."

That is, I am still talking of the independent refiner.

" Whereas the independent is now "compelled to erect additional storage facilities to "carry presently unsaleable distillates and fuels, "gradually weakening his financial capacity to carry on, "the major company refinery, being equipped to process "all the crude oil into standard gasoline as a primary "product and coke if necessary as a residue by-product, "benefits from the dislocation of the farmers buying "habits brought about by the present collection methods."

It is very easy to understand today with the big, with the 3rd grade gasoline and distillates selling below marketing costs, the companies are certainly not going to object if a greater proportion of the gasoline sold is "Q" and Ethyl. There is that much better profit.

[illegible]

[illegible]

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" Another result of the present
"tax situation is, that as the farmer's prosperity
"increases due to better crops or other causes, he
"acquires newer cars and tractors and then purchases
" standard grades of gasoline, these grades being
"manufactured in Alberta solely by the major companies.
"The independent cannot produce this grade without the
"addition to the gasoline he manufactures, of Ethyl
"fluid, a chemical compound the manufacture and sale of
"which is controlled jointly by General Motors and
"Standard Oil of New Jersey.

" The Ethyl Corporation is not
"inclined to license any independent refinery in Alberta
"except under conditions that practically gives the
"major companies operating in Alberta control over
"the marketing policies of the licensee.

" This means that in effect the
"present tax collection system strengthens the ability
"of the major companies operating in Alberta to curtail
"competition of independent crude company producers and
"refiners and indirectly or independent marketers, as
"the independent marketer is compelled to purchase his
"standard gasoline and Ethyl gasoline from the major
"companies and merchandise these products and all his
"other products under the constant threat that if he
"does not follow policies acceptable to the major
"companies he will face the possibility of losing his
"source of supply with all its consequences.

" Proposed solutions:

" It is difficult to propose a

"solution without determining the facts by an accurate "survey of the factors involved.

" At the present time a percentage "of farm tractors and combine engines in the province "are what is known as gasoline burning and a proper "survey to ascertain their number and the cost involved "in converting these engines to distillate burning, "should be known before the feasibility is considered "of taxing all gasoline purchases irrespective of use, "with possible exemptions, under strict accounting, of "gasoline for illuminating purposes and other minor "uses, and the complete exemption of all other fuels "except a nominal inspection tax of possibly a graduated "foe per gallon varying with the grade."

Now an inspection tax at the refinery, that is not shown to the consumer and has a different effect, just the same as an indirect tax has a different effect than a straight direct tax on the purchaser. That is one of the solutions I propose.

" By the authorities establishing "and enforcing reasonable standards for all fuels and "with the present method of taxing at the source, the "suggested method of taxation can be effectively "controlled, probably with less expense for administration "than is the case at present.

" The only objection to the above "proposal is when heavy fuel is used for road purposes, "and this can be taken care of by checking up on the "uses of diesel trucks or cars and ascertain their

"purchases or provide them with an annual record
"certificate, on the liquor permit pattern, where
"their purchases will be recorded.
" I am not usuggesting any other
"solution in this memorandum, but I believe if a confer-
"ence of officials who administer the present act and
"representatives of producers, refiners, marketers and
"farmer consumers were held and the questions studied,
"a workable solution would be found. There is one
"thing certain, the present situation with its glaring
"abuses should not be allowed to continue.
" Another effect of the present
"tax collection method is to make it very difficult to
"create other than farm markets for the heavy distillates
"produced as by-products in the manufacture of gasoline."
I have already gone into that.

THE CHAIRMAN: Mr. Plotkins, supposing everything that one bought at the service station pump was taxable and everything that was bought in drums for use on the farm was colored, would that be effective in the stopping of the evasion of taxation?

MR. PLOTKINS: It would but it would not accomplish the aim that I am trying to point out to this Commission. You can find all kinds of ways of taxing this and not taxing something else but what I am trying to point out is what the effect of this or that method of taxation has on competition because after all, as I understand it, the main purpose of this Commission is to find out if competition exists in the oil business and if it does exist in what way and what can be done to help it exist that much more so as to bring down

costs and prices so that the main purpose of my proposal is to go back to the fundamentals and allow the refineries, if there are any who wish to, and there certainly will be if there is opportunity for them, to start topping plants and bring about their proper pressure in the situation in Alberta and in Canada.

Now, if you want to study the taxation system to favor one industry and give it to another, that is a different matter but here I am dealing solely with the aspect of taxation on the competitive system.

THE CHAIRMAN: But we want to very seriously consider the theory of taxation predicated upon the idea that those who use the roads should pay a special gasoline tax because they are especially tearing them up but that the farmer who uses machines on the farms, like the man who uses a stationery engine in his factory, is not destroying the roads and so should not bear a tax which is primarily intended to maintain roads.

MR. PLOTKINS: That is correct.

THE CHAIRMAN: Now on that theory we are concerned with considering the farmer and the man with a stationery engine in a different light.

MR. PLOTKINS: That is so.

THE CHAIRMAN: And it has been suggested to this Commission that advantage has been taken of that, although he is treated differently, he is not content, he uses that gasoline in vehicles which are occupying the roads and that is one of the things we have to think about?

MR. PLOTKINS: Yes, well, I will predicate my argument ----

[illegible] as [illegible] see so that the main [illegible] of my proposal is [illegible] the fundamental and follow the refinerles, if there are [illegible] the wish [illegible], [illegible] there is certainly will be if there is [illegible] for them, to start topping plants and [illegible] in the [illegible] measure in the situation in [illegible] and [illegible].

Now, if you want to study the [illegible] system to [illegible] quantity and give it to [illegible], then it's different method but here I am dealing solely with the cancel of taxation in the competitive system.

MR. CHAIRMAN: [illegible] we want to [illegible] [illegible] the theory of taxation predicated upon the idea that those [illegible] should pay a special [illegible] that because [illegible] [illegible] bringing them up but [illegible] [illegible] the terms. Like the [illegible] [illegible] in [illegible] country, is [illegible] [illegible] [illegible] that's which is [illegible] [illegible] [illegible].

MR. [illegible]: That is correct.

THE CHAIRMAN: [illegible] theory we [illegible] with contained in the [illegible] and [illegible] with [illegible] [illegible] in a different light.

MR. [illegible]: [illegible].

MR. [illegible]: [illegible] be [illegible] to [illegible] [illegible] that [illegible] has been taken of that, [illegible] [illegible] treated differently, [illegible] [illegible], [illegible] [illegible] in vehicle [illegible] [illegible] [illegible] [illegible] of the things [illegible] [illegible]

MR. [illegible]: [illegible] [illegible] [illegible]

THE CHAIRMAN: It may have other angles too, just such as you suggest, but we are not going to ignore the first one, we have to think about it and if you can help us we will be glad.

MR. PLOTKINS: I take it from your remarks that the money which is levied by these taxes is going on the road.

THE CHAIRMAN: Well we know it is going into the general revenue of the province but we also know it has been suggested that the province is paying out more than that on the roads, whether or not, we will make some investigation to find out.

MR. PLOTKINS: Now strictly from a road tax standpoint it is probably a sound basis then that the farmer should not be penalized if he uses gasoline in his tractors or in his motors or in anything so long as he does not use it on the roads. Now to prevent him from evading taxes or to prevent an evasion of taxes, colored gasoline is possibly one method and then we have the advantage of having the Saskatchewan Government trying it out so that the experience gained there will guide this Province.

THE CHAIRMAN: Do you know how it has worked out?

MR. PLOTKINS: I understand, and I do not know very much about it, but from what remarks I have had from people in Saskatchewan and marketers, I understand that the black gasoline, I think it is black, ---

MR. FRAWLEY: Purple.

MR. PLOTKINS: It leaves a tell-tale mark when it is used in a truck or car and it is working very satisfactorily.

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THE CHAIRMAN: Has it any effects on the valves or any other parts of the machine.

MR. PLOTKINS: I do not know what its effect is but if it has, if it dries ---

THE CHAIRMAN: It might have something which would destroy the engine into which it is put.

MR. PLOTKINS: It will not destroy the engine.

THE CHAIRMAN: Or do it harm or affect it in any way.

MR. FRAWLEY: If it is only a dye, there is dye in all the gasolines.

MR. PLOTKINS: Dye does not affect the use of a gasoline engine but I would surmise that companies would not put any material in the gasoline which would deteriorate or injure the engines, I would just assume that.

THE CHAIRMAN: Does that mean setting up another tank?

MR. PLOTKINS: That is what I was going to come to.

THE CHAIRMAN: Or putting it into a barrel when you sell it or what?

MR. PLOTKINS: It means complicating and increasing the cost of marketing because in effect, I understand it has created quite a lot of complications to the refiners and marketers in Saskatchewan and no doubt it must have helped the revenues of the Province; now how much it has cost the companies I do not know but I surmise it has because it affects cost if we add one product, the effect is that that product we are adding is usually of small volume.

THE CHAIRMAN: Surely it will advantage the company

[illegible]

[illegible]: [illegible] in any offense in the voting.

[illegible] [illegible] the machine.

MR. [illegible]: I do not know what its effect is but if it [illegible] ---

[illegible]: It might have an[illegible]

[illegible] the counting into which it is put.

[illegible]: It will not destroy the service.

[illegible]: It is in fact or effect it is [illegible]

[illegible]

[illegible]: It is only a [illegible]

[illegible] will be [illegible] conditions.

[illegible]: [illegible]

[illegible] [illegible] [illegible]

[illegible]

[illegible]: Has that been [illegible]

[illegible]

[illegible]: [illegible]

[illegible]

[illegible]: [illegible]

[illegible]

[illegible]: [illegible]

[illegible]

[illegible]: [illegible]

[illegible]

because if there is tax evasion now and in order to get a certain revenue from the oil the Government has to fix a tax of so much ---

MR. PLOTKINS: Yes.

THE CHAIRMAN: Although it costs you something to put in coloring matter, if that were decided to be a desirable thing, it is to be assumed that the tax will come down and your volume will be greater.

MR. PLOTKINS: That is correct.

THE CHAIRMAN: Because those who are now evading would have to pay and there would not be the same need for a high rate.

MR. PLOTKINS: Eventually, and that may mean two years or three years.

THE CHAIRMAN: In the long swing, as someone else put it?

MR. PLOTKINS: Yes, it will prove to be a benefit and the only thing is temporarily the companyies are faced with an added expense of handling that gasoline.

MAJOR LIPSETT: So far as drums are concerned there would not be any extra cost there, Mr. Plotkins.

MR. PLOTKINS: Drums?

MAJOR LIPSETT: Yes.

MR. PLOTKINS: Oh, no.

MAJOR LIPSETT: It would be pumps, would it?

MR. PLOTKINS: No, there are no pumps in connection with it because it is not handled retail. The expense is at the refinery in having to maintain separate storage.

MR. COTTLE: And at the bulk stations.

MR. PLOTKINS: Yes, and to maintain separate storage and the trucks delivering it having to handle it more carefully and also having to require bigger stock.

MAJOR LIPSETT: Why have the trucks to handle it more carefully?

MR. PLOTKINS: Because if it is black or purple and you have to do something, steam the tank or clean it out before you can use it for some other product.

I have already covered in the previous testimony, it has been covered anyway, where the question of this gasoline coupons are being traded in as cash and so on and so forth, so from the taxation standpoint that is pretty well all I have to say.

MAJOR LIPSETT: Mr. Plotkins, in the course of reading that which you mentioned about the Ethyl Corporation, have you anything now to complain about, about the Ethyl Corporation?

MR. PLOTKINS: Have I anything which?

MAJOR LIPSETT: Have you anything to complain about, about the activities of the Ethyl Corporation in the Province or any suggestion to make?

MR. PLOTKINS: I did have at the start of this Commission, I did have.

MAJOR LIPSETT: I understand that.

MR. PLOTKINS: But now I have not any for this simple reason that I find myself in the position where I can manufacture leaded products and I will be able to compete with the other companies and meet in the field of battle and just do the best I can; in other words I have an opportunity to have Ethyl.

MR. COMMISSIONER LIPSETT: There is no suggestion of any kind as far as the Ethyl Corporation is concerned of discrimination as between larger companies and the smaller refineries, as far as you are concerned?

MR. PLOTKINS: Not in my case. Not as far as I am concerned.

MR. COMMISSIONER LIPSETT: They seem to adopt the attitude that they wanted to hear it, if there was any complaint, and deal with it when they were before us. But so far as you are concerned there is no complaint?

MR. PLOTKINS: No, I have no complaint.

MR. COMMISSIONER LIPSETT: Have you any further comments to make on this question about the smaller containers?

MR. PLOTKINS: In regard to Ethyl fluid?

MR. COMMISSIONER LIPSETT: Yes, or does this suggestion that the Ethyl Corporation have made that two or three people might get together and buy a carload lot in the larger containers, does that settle the question?

MR. PLOTKINS: The question respecting the small containers is not the question of buying in volume. The reason I raised it when I first began negotiations with the Ethyl Corporation was that at that time I could not foresee the scope of our operations being sufficient to justify putting up the storage and carrying big enough stock requiring one big drum of Ethyl fluid. It would have meant increasing our costs because our method is to turn over quick and to reduce costs. But with the Commission in session and with our companies getting justice all along the line, I began to take heart

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and we began to plan a program of provincial wide operation. And then the aspect of the small drums or big drums lost its importance.

MR. COMMISSIONER LIPSETT: How about the refiner still smaller than you? Do I understand there are one or two still in the Province? They would not need Ethyl I suppose at all?

MR. PLOTKINS: They could not meet the specifications that the Ethyl Corporation imposes for blending, for gasoline blends, so that they would be precluded, even if they had a licence they could not meet the conditions.

MR. COMMISSIONER LIPSETT: That is their base structure would not be good enough to add the Ethyl fluid on to?

MR. PLOTKINS: That is correct. Now the Ethyl Corporation has certainly helped us in the last six months. They have gone even to the extent of permitting a shipment to be divided amongst two or three, and that is certainly going to help the independents and those that come after us and start up and get to a certain point.

MR. COMMISSIONER LIPSETT: They expressed their wish to meet any complaint or any suggestion that would arise and I am just putting it to you is there anything that occurs to you now that should be done or could be done that has not been done?

MR. PLOTKINS: I have absolutely no complaint. We can meet their conditions and they can meet ours and we are put on an equal basis with everybody else. I do not see any reason to complain.

MR. COMMISSIONER LIPSETT: So far as you are concerned

the conditions imposed by the Medical Staff for safety and everything like that, they are reasonable and efficient?

MR. PLOTKINS: Yes.

MR. FRAWLEY: Are you still allowed to go down to the Sunburst refining yard and get your shipments direct? The Ethyl would seem to think there was something wrong about that. Are you and the Artic still going to the Sunburst and getting your supplies?

MR. PLOTKINS: Of leaded products?

MRL FRAWLEY: Yes?

MR. PLOTKINS: Yes, we are still doing that.

THE CHAIRMAN: That is something, you are perfectly happy about that anyway?

MR. PLOTKINS: Yes.

THE CHAIRMAN: Something accomplished, something done.

MR. PLOTKINS:

ADEQUACY OF MARKETING FACILITIES

Evidence has been produced by the Imperial Oil and other Companies that they had served a wider territory than our company in the fact that they have spread out over the entire province.

While our company, I admit, serves only a definite area at thepresent time, we claim to serve it more adequately in that our dealers, and agents coming to our distributing plants can, in turn, serve by truck, even remote areas profitably at a lower laid down cost to the consumer than the major companies; in that in our system a product is handled only once whether it is delivered in a prosperous, settled area where there

are company bulk plants, or whether it is delivered in remote bush country, having few farmers and low consumption, and where there are no existing bulk plants.

COST OF DELIVERY TO CONSUMERS BUYING WHOLESALE:

Our method of distribution not only results in lower marketing cost to us, but also in a lower delivered cost to the drum consumer as the product is, in the main, taken direct from our distributing centre and delivered by truck to the place of consumption without any re-handling or loss.

COST OF TRANSPORTATION:

The bulk plant method of distribution is efficient when it is operated in the main centres such as cities and at points of large consumption where the charge that is incurred in storage and re-handling can be spread over a large turnover, but in the case of country points with comparatively small gallonage the cost of operating bulk stations on railroad, and shipping by tank-car necessarily involves re-handling from the bulk plant to the point of consumption or resale. and large storage facilities are required to unload tank-cars and provide sufficient reserves.

With a comparatively small turnover this results in high distribution costs per gallon, and degradation of products, whereas truck distribution from large consuming centres or from the refinery direct to the retailer or consumer, or small combination station, results in quick turnover and can be made at a fraction of the cost and investment of the railroad bulk plant.

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To determine the price by wholesale of each product or a group of products, and say whether it is fair and equitable is determined by each individual wholesaler's volume and method of doing business. One marketer, because of his large volume of other products outside of gasoline may have a lower sale price based on lower distribution cost than another marketer who sells gasoline almost exclusively, and to attempt any regulation of prices would be entirely inequitable and would conceivably result in higher prices to the public than if competition is allowed to have fair play.

Now I have pointed out that in a city where the gallonage is very large and a refinery such as ourselves or the Imperial transport by tank truck or tank car, it is immaterial which is the cheapest method of transportation there imposes itself; but in the city the volume is such and the evidence has showed it that the Imperial used salaried men at these points and that the cost of distributing is very very low. Now it is justified there because it is the most economical method of doing it. But in the country point where there is five or six or seven companies in the same town, it is certainly the height of folly to have six or seven bulk plants with six or seven investments and six or seven big stocks and six or seven commission agents, if it can be done direct from the main distributing centre by truck or any other method that will lay it down to the consumer cheaper and I have pointed out the very reasons that make it cheap.

MR. COMMISSIONER LIPSETT: Now is not that system

you are mentioning there, is not that more or less the system that is now being adopted by the British American Company?

MR. PLOTKINS: It is just about that kind of a system. But they are not going so far as we are. They are doing it in steps, probably wisely for their organization.

THE CHAIRMAN: Mr. Halvorsen, who is a man of wide experience, did not seem to think so well of that.

MR. PLOTKINS: He does not because they have investments in bulk plants, pretty well written down. They think apparently it is much more profitable for them - because after all that is the guiding light for them - to continue with their system, otherwise they would change and they will change in time when competition forces them to change. If their costs are higher, and the evidence discloses that it is, it is only a question of time until conditions will force them to get away from the bulk plant and go to some other system. But in the meantime as long as they have the ability to impose their price which permits them to operate that kind of a bulk plant, they will be able to carry on. When we break down their price and they have not got the money with which to operate these bulk plants they will just disappear, because Santa Claus in New York cannot last very long any more than any other organization is limited to its capital resources.

MR. COMMISSIONER LIPSETT: So far as your view is concerned you think the economical plan of distribution in the Province is something like the plan adopted by the British American?

MR. PLOTKINS: Or its modification.

MR. COMMISSIONER LIPSETT: You say somewhat extended by your own operations?

MR. PLOTKINS: Yes, until it is between ours and the British American. The British American takes it from the refinery and ships it to the main distributing centres by tank truck or tank car, and from there they re-distribute it to these combination outlets. But in practice that is not what happens at all, at least it would not happen that way very long in practice. The oil will go from the refinery direct to these little distributors, and combination plants, and the main distributing points will be only used as reserves to take care of the road conditions. The only disadvantage to that system is that the farmers still have to come in and get it. We may have the wrong system but we do it this way. We put our tanks in Calgary and Edmonton and Red Deer.

MR. FRAWLEY: You say the farmer has to come and get it. These dealers distributors of the British American deliver to farmers.

MR. PLOTKINS: The set-up is such that they won't deliver very long, because they cannot make a profit.

MR. COMMISSIONER LIPSETT: The suggestion was that the British American would have so many of the stations that they then would ask the farmers to come in a short distance to these new stations - a very much increased number of them - and that is an economic way of distribution.

MR. PLOTKINS: It would eliminate delivery to farmers, that is right.

MR. COMMISSIONER LIPSETT: I think that is why it

was adopted, that is as I understood the scheme.

MR. PLOTKINS: Yes.

MR. FRAWLEY: It is true Mr. Miller is willing to go a considerable distance and is practically posting two prices now at these wholesale and retail outlets. But I understood that the delivery facilities were still there, potentially, and th t British American customers were just in the same position as they were before.

MR. PLOTKINS: True, Mr. Frawley, but only to this extent, that the small combination dealer with the restricted volume and the restricted territory he has to operate, cannot continue very long to operate a delivery system, and the result will be they will disappear and of its own dead weight will just go.

MR. COMMISSIONER LIPSETTP You are going to tell us the difference between that and your system?

MR. PLOTKINS: That is right. With us - not because I do not believe the B.A. system is better or as good or worse, but because our capital structure does not permit me to do that at the present time. As a result I want to put myself in the best competitive picture that I can with what is available to us to do business. We cannot build five or six hundred stations. I have not got the money, and I certainly want to get some of that business. I want to be able to get it on a competitive basis. Otherwise I won't get it. So we have to devise a system adaptable to our situation, and our system is putting it through our four main distributing centres and asking our dealers or agents to come there with their own trucks and they perform in this manner, as distinguished from the B.A. They have a place of

business of their own and maybe tanks and pumps and a service station or a farm yard. But they do not put that gas in that farm yard or service station. They would deliver that direct to the user and only keep a little in their tanks for a reserve, the same as the B.A., will keep some gasoline and other products in their reserve tanks at strategical service stations.

THE CHAIRMAN: And you save double handling?

MR. PLOTKINS: We save double handling and we perform a service of delivery at the same time with no additional cost. That does not mean our system is the best because with prosperous conditions a farmer might not want it delivered. He might want to come in and get it in town or he might have other reasons. We will have to adapt ourselves to the trend as we find it from time to time, but for the present this has worked and it has permitted us to grow in gallonage out of proportion to our capital, and as a result of that lower the average selling price to the consumer with more profits for ourselves. So it is sound, and as long as it is sound it will endure provided I am not affected by the laws that prevent me from doing that.

MR. COMMISSIONER LIPSETT: Is there any suggestion of anything in the laws at present that is preventing you doing that?

MR. PLOTKINS: Oh yes. We have - I am going to deal with that later on. It is not a direct law to say "You cannot do this" but they create conditions that we cannot do it so the effect is the same.

MARKETING BY RETAIL

The same factors operate in the marketing of motor fuels by retail as marketing by wholesale, and there is no point in dealing with it further.

The number of retail service stations appears on the surface to be unreasonably large, but the evidence shows that irrespective of the cost of marketing through service stations the consuming public is only called upon to pay the competitive price. The average service station's turnover is derived only in part through the sale of gasoline and is, in effect, a store merchandising service, and selling a great variety of automobile needs of which gasoline is merely one, and any restriction in the number of outlets must result in less service and availability to the public, without the benefit of a reduction in price.

It does not matter. I do not care whether there is too many service stations, but there is too many because the conditions that existed at that time permitted of their creation. Conditions will destroy them if they are not necessary.

And there is another thing I want to point out that I do not believe conditions will destroy them any more any longer. They are changing their character. The service station todgy is not what it was ten years ago, and as time goes on it will become less and less what it was ten years ago. The Texas Company has pioneered in the United States and so have other comoanies, stations that are really only very little to do with the oil business. They have great

big service centres usually leased to automobile selling companies and the gasoline and oil end of it is just incidental to the operation of the station. So that the development of that type of station has destroyed the older type, but created in its place a different type with considerably more capital invested, but only a very small part of that capital devoted to the oil business. Now that creates another competitive situation. Why? I cannot build ten or fifteen or seventy-five or a hundred thousand dollar service stations or garages so I have to sit there and wait to see what effect it has. The reason the Texas Company can do it and the reason some other companies can do it is that they are able to obtain money at very low rates of interest and they can go ahead and invest in these stations and as long as they see a reasonable chance of getting 6% interest or less, they will build an outlet and make sure that they have got some outlets for their own products. Now I am not in that position. A Calgary Company, an Alberta Company, we cannot get the money at 2½%. ell, we are not going to die and let them take our business away from us. We are going to figure out ways and means of meeting that situation. With the result there will be another type of station or business method developed. And this thing will go on for ever.

With regard to the Government of the Province of Alberta taking over the wholesale and retail distribution of petroleum products in the Province, the evidence submitted shows the complex problems that goes towards making up successful competitive distribution, and it is my considered opinion that government

operation would only result in higher distribution costs, lowering of quality and general inefficiency.

The industry can be effectively directed to public service by the Government giving the industry, especially the small units who are pioneering new methods, assistance in the form of research, aiming at better products and lower costs, and by co-operation with the industry to the attainment of these ends.

CONCLUSION

In the realms of economics the duty of the state, where it affects in principle the social well being of the citizen and the public interest cannot be denied, and this is being increasingly expressed by legislation regulating hours of work, minimum wages, holidays, workmen's compensation, old age pensions, etc., but when the state attempts to exercise judgment in sensitive economic matters that fluctuate from hour to hour and day to day, through the instrumentality of a Statutory Government Board restricted by bureaucracy, and limited in authority and responsibility, history records that we are asking for miracles and can expect certain failure.

The oil business, in all its ramifications, evidence has established, is very sensitive to world conditions, and any attempt by the Alberta Government at price regulation, or regulations on the public utility principle, is doomed to failure in that price regulation can be successfully evaded by the public and the industry alike, and without price control the authorities cannot regulate business practices in detail.

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MR. COMMISSIONER LIPSETT: Without going so far as that, regulating everything, Mr. Plotkins, are there not several things that wome body or some board can be helpful about?

MR. PLOTKINS: I am going to deal with that and I am going to form some conclusions that I think will answer that question.

The state is in duty bound to protect the citizen against monopoly for the private interest, and to this end, on broad principles, should interfere with any monopoly practices in the oil industry on judicial grounds.

It seems to me that the Criminal Code of Canada in the Anti-Combines Act and the various other federal laws relative thereto, impartially and judiciously enforced are sufficient to give the Province of Alberta the required correctives.

And I appeal to this Commission to recommend that all existing restrictive legislation which attempts to manage the oil business, through regulations and orders-in-council, should be repealed as they attempt to deal with petty matters of trade practices which can only be adjusted by co-operative efforts within the industry.

Government regulations of business practices is oppressive to small enterprises such as our own, and tends to freeze the oil business in large units, which for their own protection devise methods to secure benefits and avoid the ill effects of such legislation.

Temporary economic

dislocations are but the sign of changing conditions, and, outside of fundamentals, abuses of our competitive system cannot be cured by Government edicts or regulation.

Abuses have always existed and probably will never be entirely eliminated, but isolated abuses does not justify throwing overboard our present tried business methods, and substitute for them new untried methods arbitrarily imposed by the Government or its nominees. The remedy for these abuses, maladjustments and injustices is to permit natural forces to correct them. Possibly a batter method is to assist the natural forces, through permitting the industry to operate a co-operative research council, under Government charter and supervision.

I, therefore, submit that any legislation seeking to correct operating abuses or temporary economic maladjustments, serves but to increase and extend the evils, and any legislation seeking to prevent monopoly only serves to bring it about.

Now any time that we try to prevent something by law in the form of an industry,practice, or evils of industry, we are dealing with pretty smart men in industry. The oil business has been developed through hard knocks and the men at the head of the industry certainly know their business, and when the government, whether it is Provincial or Federal, attempts to deal with maladjustment, economic maladjustments, if the experts in the business themselves, the owners of the business, cannot handle that except in time in the normal course of their business, what chance has the Government body or Government officials to do anything about it? Now

the only thing I recommend to this Commission that should be prevented is several men, naturally greedy as we all are, wanting to capture the business and turn it to their own profit. That has to be prevented for the individual good and for the individual citizen's right to live, and laws exist in this country to prevent that. Let them be enforced. There is no use putting on more laws. We have all kinds of them now governing this and the trouble is that they are not enforced.

MR. COMMISSIONER LIPSETT: What is the law now?

MR. PLOTKINS: I am going to deal with that and deal with them one after the other if you care to listen to them. That is, in brief, my viewpoint and my argument against more legislation. Now I will go back to this. I have written a couple of letters on this matter and I want to show you how idiotic Government attempts at regulating business practices has been.

This is a letter we received from the Department of Trade and Industry. I want to say that we are governed by two different departments of the Alberta Government. We operate our business under the Provincial Secretary's Department when it comes to taxes. We are responsible to the Department of Trade and Industry when it comes to regulations and administration. of certain aspects of their legislation. So that we are between the devil and the deep sea as to where the authority of one starts and stops, and the other starts. There has been conflict between them two departments and the result is there has been no enforcement of whatever legislation they have up to date. Not all of it. They have enforced some but some of it has not been enforced, happily for ourselves.

L. L. Plotkins.

This is dated October 11th, 1938. It is sent from the Department of Trade and Industry, and addressed to Lion Oils Limited, Calgary.

"Dear Sirs:

Re: Fuel Oil Licensing Act and regulations thereunder.

It has been brought to the attention of this Department that certain wholesale distributors of fuel oil are making a practice of providing various contractors and truckers with the free use of sundry automotive equipment, such as fuel oil retail vending pumps, air compressors, etc. In turn such contractors and truckers have agreed to purchase all their fuel oil supplies from the company owning the equipment. Under such a procedure other wholesale distributors, whose sales are made in conformance with the regulations under the Act, are penalized and faced with the loss of sales they might otherwise enjoy.

Section 37 of the Regulations is quite specific and prohibits the above mentioned practice. We must insist that this regulation be strictly complied with and we would request that full particulars of any known incurring infraction be promptly forwarded to this Department.

We also desire to call your attention to Section "C" of Regulation Number 38, and to Section "G" of the interpretation under the Regulations. Notwithstanding the fact that copies of the regulations under the Act have been sent tout to all wholesale agents, information is received at this Department,

"from time to time, that various agents continue to sell fuel oil from wholesale premises in lots of less than twenty gallons, and also to dispense fuel oil to the fuel tanks of motor vehicles by way of measure or from wholesale vending pumps. The seriousness of this practice is, perhaps, not fully realized by some of the wholesale distributors as this Department, upon obtaining proof of such infractions, may suspend the Company licence at such agencies or the wholesale fuel oil licence in its entirety."

We are at the mercy of some minor official deciding we have not complied with some regulation or we have carried out an infraction of some of his regulations, and just taking and wiping out our capital for us and we cannot operate in the oil business any more. You would have quite a time establishing whether this company did this or some other company did something else of some nature which is outside of the control of the company. If the operator of a station chooses to give it away, I certainly cannot stand there day and night to prevent him. If an agent chooses to loan somebody a pump, there is only one way we are going to stop it and that is in the industry ourselves. If there are too many pumps we should have less, and we will cut the price to get it. We do not need governments to enforce these regulations because they are not capable of enforcement.

MR. COMMISSIONER LIPSETT: Is the meaning of that regulation that a man is not a wholesaler who is selling in less than twenty gallon lots, and they want to enforce

that?

MR. PLOTKINS: As we understand it, we have different interpretations. If you get one official they interpret it one way, and if you get another they interpret it another way. But as I understand the sale of twenty gallons or over is considered wholesale. Then it comes down to a matter of price. A man who buys twenty gallons buys at a different price than if he buys nineteen, he has to pay the full price.

MR. COMMISSIONER LIPSETT: Do you suggest there is anything unreasonable in that view? That a man to be a wholesaler he should deal in more than twenty gallon lots?

MR. PLOTKINS: I want to point out this applies to 3000 or 4000 retailers and dealers in this Province, and whether it is right or wrong, that you sell wholesale or retail at this price or some other price, the fact is that you are taking away from the individual his God-given right to buy something for what he wants to pay for it, and sell it at whatever he figures he needs.

MR. FRAWLEY: That is what it comes down to, the competitive system in a word. But just to keep Mr. Commissioner Lipsett straight about it, there is more than volume concerned in the definition of a wholesale sale. It must be a volume of twenty gallons or more in a container to be removed from the premises at the time of sale.

MR. PLOTKINS: That is true. You have all kinds of regulations for us to do this and do that. But what I am pointing out is: Are you enforcing them? Are you capable of enforcing them as a Department? Have

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they sufficient policemen and sufficient machinery to go out and see that that particular kind of regulation is enforced?

MR. FRAWLEY: I just wanted to keep the Commissioner straight about the definition of wholesale sales, that is all.

THE CHAIRMAN: Well we will proceed at two o'clock.

(At this stage the Hearing was adjourned until 2 P.M.)

.....

THE CHAIRMAN: All right, Mr. Plotkins.

MR. PLOTKINS: Before I go ahead with these regulations I would like to turn over to the Commission a little booklet issued by the American Petroleum Industries Committee and it is entitled "Is It True What They Say About Taxes". It covers the tax situation quite thoroughly and I think it will be of great assistance.

THE CHAIRMAN: We will be glad to have it.

MR. PLOTKINS: It has also some little, good cartoons in it. At least that is the industry's side of the question.

THE CHAIRMAN: Yes.

MR. PLOTKINS: "We also desire 'this is still reading from the letter to the Department of Trade and Industry an I will comment on it as I read.

MAJOR LIPSETT: That is of the 11th of October, 1938.

MR. PLOTKINS: The 11th of October, 1938.

"We also desire to call your attention to Section "C of Regulation No. 38 and to Section G of the "interpretation under the Regulations."

In connection with these laws and regulations I took a trip to New York a few weeks ago and I went to the Head Office of the Texas Company and I was impressed that in their position there were two solid floors with, I was told, 150 attorneys that constituted the legal department of the Texas Company's

operations. Now I was only astonished as to the extent. I knew that to carry on an oil business you had to have a thoroughly constituted legal department if you expect to follow up the laws and to keep within the laws but I was certainly surprised to find to that extent, to what extent the Texas Company was compelled to maintain a law department. It was as great or greater than the sales department. Now that shows you, at least it convinced me, the tremendous cost to that company, the relative impotency of the smaller individual in the refining or marketing or oil business, to stand up against the complex laws of the country and to obey them when a well organized company such as the Texas Company has to go to that length to keep within the laws and they had, I was told by Mr. Graves, 150 attorneys who were constantly employed.

"We also desire to call your attention to
"Section C of Regulation No. 38 and to
"Section G of the Interpretation under the
"Regulations. Notwithstanding the fact that
"copies of the regulations under the Act
"have been sent out to all wholesale agents,
"information is received at this department,
"from time to time, that various agents con-
"tinue to sell fuel oil from wholesale premises
"in lots of less than 20 gallons and also to
"dispense fuel oil to the fuel tanks of motor
"vehicles by way of measure or from wholesale
"vending pumps."

At the present time it is a crime ifa truck comes into our premises to take a delivery of 20 gallons, to sell him 20 gallons from a retail pump.

He must go to the wholesale facilities. We have to give it to him in a bucket or we have to give it to him through the wholesale pump. Well now it happens that as the distribution becomes less and less complicated, that should be eliminated, and this would tend to keep two pumps going when there is really room for only one, especially in the smaller centres.

MAJOR LIPSETT: Could you give him 10 gallons twice, Mr. Plotkins.

MR. PLOTKINS: Well I suppsse you could if you wanted to assuage your conscience but after all it does not matter whether the man buys at wholesale or retail, the price he is going to pay is going to be a matter of arrangement between him and that dealer and irrespective of how many laws you have on the Statute Books, it will still be that but if there is a law that prevents him doing that, it must be done more or less in collusion with the customer because the company is not in a position,-and we are no better off than any other company -to inspect and impose conditions on our dealers or on our employees. We can only set up rules. We can check to see that they are observed but when it comes to arrangements, private arrangements, between the agent or the employee or the dealer and his customer, the companies are powerless and the Government is powerless. We have, in spite of the fact that we have no commission dealers, and I have absolute control over our dealers in that we pay the salaries and impose working conditions. I find myself from time to time up against practices that the

employees carry on with our customers unknown to us. Well under the Act our licenses should be cancelled and we should be put out of business. Well, we have no control over those and besides that we never will because these private, petty matters of trade is a matter of convenience, not of economics. One man may want it this way, another man may want it another way and the question of personal likes and dislikes enters into it, one condition with this man and another condition with another man, and unless trade is permitted to do that then it results in an arbitrary cut and dried system of doing things, which certainly reacts against public benefits; in other words, they are going to start and make automatons out of us and well, I do not think it is advisable.

"The seriousness of this practice is, perhaps not "fully realized by some of the wholesale dis- "tributors as this department, upon obtaining "proof of such infractions, may suspend the com- "pany license at such agencies or the wholesale "fuel oil license in its entirety. The necessary "pressure should, therefore, be brought to bear "upon all wholesale agents in this regard, and "wholesale distributors should clearly recognize "that when such infractions are committed, the "agent imperils his employer's Provincial License."

Now the department recognizes while we have very little control over our agents and employees and dealers, that they expect us to use pressure. Now I do not know what kind of pressure

would be used to make them do something they will not do, so they threaten us with cancellation of our licenses, not only our retail license but all our licenses.

"A further practice, which is prevalent among "certain wholesalers is that of erecting and "placing in operation new wholesale and retail "outlets without first obtaining authorization "from this department."

The license at the present time is not mandatory. It is just at the fancy of the official, whether he wants to give it to you or not. If his opinion is or the considered opinion of the department is that they do not want any more licenses or they do not want any more licenses in that particular point, they just say "We will not give you a license", that would be fine if they guaranteed us a living but they do not guarantee us anything, and the result is if we cannot go out and use our own judgment as to where we are going to do business and how we are going to do business, then the competitive system will not work and you cannot have it half competitive and half Government control and expect it to work.

"This matter has been brought to the attention of "wholesale distributors on several occasions and "such a practice must be discontinued. Some "companies proceed to make large investments in "bulk and service stations without reference to "this department and, following their completion, "make application for the required license. All

[illegible]

"wholesale distributors are, therefore, hereby "notified that, should any future applications "be received at this department covering the op- "eration of outlets erected and placed in op- "eration in this manner, licenses may be refused "irrespective of the investment made."

Now we began building a station at Drumheller here about two months ago. I notified the Department that we were going to build and asked for a license. Now they wrote back and said "Yes", they would give us a license but we had to enclose another $5.00 for another license they expected us to take out under another Act. The Act was the Trade and Industry Act and it required us to have, on top of our Fuel Oil License, I do not remember the name of this other license but anyway it permitted us to sell tires or to do some minor repairs or sell accessories.

Now I have objected to that license in the past and refused to pay it because we were not doing that kind of business except casually and another thing as I understood the Act, as I read the Act, that if we had a Fuel Oil License we were not supposed to have a lot of other licenses. Now I appealed to the Department and put my position in front of them. It was never decided what the position was but when we made application for this Drumheller license the official, this same man that signed this letter, held a club over our head and said "We will not grant you any license under the Fuel Oil Tax Act until you have taken out the other license." Now it is war time

"Wholesale distributors are, therefore, hereby
"notified that, should any future application
"be received at this department covering the op-
"eration of mobile crusher plants in op-
"eration in this manner, licenses may be refused
"retroactive if the investment made."

Now we begin building.

Another at Brumbelow here about two months ago. I
notified the Department that we were going to build and
asked for a license. Now they wants me to send "Exa",
they would give me a license but I had to send me another
$4.00 for another license because they expected me to take one
under another act. The act was the Trade and Industry Act
and it required me to have, or for me to get (1) license,
I do not remember the name of this other license but anyway
it permitted me to sell tires or to do some other repairing
as well as gasoline.

Now I have applied to this
license in the past and returned to my it because we were
not doing that kind of business except occasionally one or two
times on a moderate scale. As I read the act, then if
we had a real oil license we - - - - supposed to make a
or other repairs. Now I appealed to the Department and
left a statement in front of them. It was never decided
that - - - - was but when we made application for this
local license the official, this same man that also
this - - - - , had - - - - - - and said "No, all
- -
- -

now and I have given up fighting over Acts or over anything, I am complying with anything the Government demands; why, because I feel that conditions have changed so the result was I gave instnuctions to our office, to our administration, to make application and send the money for all the licenses that the Department wanted and we have done so but what I want to point out, and I am only referring to pre-war conditions, is that the Government as it is constituted in Alberta, has other means of bringing you to Court,-which is the only fair means, they use pressure, as he mentions in here, advises us, they will not do this or they will not do that unless you comply with other demands which may not be legal and we are in that position, especially the smaller individual company, when you have a bureaucratic system of government, it is almost unquestionable, that that is what is going to happen. If you do not comply with all their theories and their demands, well when your license depends on some individual granting you the license, well then naturally you are faced with that.

MAJOR LIPSETT: Were those two licenses for the business in Drumheller, Mr. Plotkins.

MR. PLOTKINS: Yes.

MAJOR LIPSETT: It was not that they were penalizing you in Drumheller for something which happened elsewhere.

MR. PLOTKINS: No, no, in fact we had no intention of dealing in commodities that they wanted us to take out the license for in Drumheller but we were at some of our other stations dealing in those commodities and as

I say only occasionally, we are mainly merchandisers of gasoline and oil. We do not attempt to fix cars or give any other service except for the fact that a customer of ours would resent it if we did not fix his tire in an emergency.

MAJOR LIPSETT: You would have to do that in Drumheller too, would you not.

MR. PLOTKINS: Well yes, we would.

MAJOR LIPSETT: They were just asking simply for the two licenses for the businesses that you were going to carry on, one continuously and one spasmodically, you had to take out the two licenses.

MR. PLOTKINS: True, but the original Act as I read it and as our solicitor reads it says if we take out a license under the Fuel Oil Tax Act we are not called upon, in fact it is specified "Gasoline", this Trades and Industries Act specifically exempts the oil industry, but apparently since then there has been a demand for more revenue and we are no longer exempt, by rule and not by law.

MAJOR LIPSETT: I suppose it simply means that there is a difference between you and your advisors and the Government and its advisors as to the interpretation of the Act.

MR. PLOTKINS: True, and instead of taking that difference of opinion to Court and deciding it in the regular way, pressure is brought to bear upon us to make us comply with it.

"Licenses are issued, under the above Act, at the "discretion of the Minister of this Department

"and the sole right to determine whether or not
"new outlets shall be opened rests with the De-
"partment."

" In addition to the above
"the Department is again compelled to draw to the
"attention of practically all wholesale dis-
"tributors the fact that regulation No. 23 (a) is
"being openly disregarded. In order to emphasize
"the necessity of complying strictly with this
"regulation, it is being quoted herewith.

"'No wholesaler shall or furnish fuel oil to any person who is required to be licensed pursuant to this Act, and who is not at the time of the sale the holder of a valid and subsisting license for the purpose of re-selling the same by wholesale or retail.'

"There is therefore, no excuse for any wholesale
"distributor or company agent, or company dealer,
"making sales of fuel oil for resale purposes to
"any person who is not the holder of the required
"license.

" Severe penalties are pro-
"vided for infractions of both the provisions and
"the regulations under the above Act and these may
"be invoked by this department covering such in-
"fractions. As previously advised, the regulations
"have been issued in the best interests of the
"regulating and marketing of fuel oil within the
"Province and all wholesale distributors are re-
"quested by this Department to render their fullest
"co-operation in the matter of their closer observance.

" Yours truly,
W. H. MacEwen,
" Fuel Oil Licensing Officer."

Now this is administered by the Department of Trade and Industry. The taxes and the coupons are administered by the Provincial Secretary's Department. The Provincial Secretary's Department have a staff, not very large, in fact very small, but a competent staff, they have been at it now for quite a few years and they have finally mastered the intricacies of the oil business. They are in constant contact with it and the inspectors and the officials of that department certainly should know and do know by this time what it is all about insofar as the operating technique of the trade and the industry is concerned but the Trade and Industry's Department which is part of the Trade and Industry Act and which contemplates putting into operation the philosophy of trade, is a different matter entirely and where the trouble has been is that that philosophy conflicts with the competitive system such as we are forced and compelled to work our business under and the result has been continuous differences of opinion, continuous clashings between my company and the department as represented by Mr. MacEwen and Mr. King and so forth.

Now as a result of these regulations the Department has been endeavoring to enforce them as a result of their enactment and because of the fact that they attempted to apply a philosophy which was not yet in working condition and to superimpose it on our economy of competitive distribution, it just did not fit in and it caused us untold trouble. Now as a result of those regulations and because of another section that he does not quote in here, we were faced with the situation in Edmonton which I want to go into because it will

exemplify what I am talking about.

The clash as I see it is not about the law. The law in this case to me and to our solicitors was very plain. We were called upon to do certain things and we observed the law to the best of our ability but it was the interpretation of those regulations railways of one or another of the department officials that seemed to cause the trouble and this interpretation was to further the philosophy of the Trade and Industry Act.

Now briefly, without taking up any more time than necessary, we found ourselves in a situation in Edmonton where the department felt that at our service station up there where we had wholesale and retail, the department felt that we were not complying with the Act in that we were selling at two different prices or more and their interpretation of the regulation was that we could not do that. Now I have gone into that pretty well in detail during the course of the testimony or the evidence and all I want to say now is to show what happened there in respect of the steps which were taken by the department to enforce compliance.

Now when the department advised us that they did not like our ways of doing business, I naturally went to our solicitor and said "Here is a letter, here is what we are doing, what about it". The solicitor wrote the department and said he could not see where we were having infraction of the Act or breaking any law. The department said "Well that is our view", all right, so we just asked the department to take it to

[illegible]

[illegible]

[illegible]

Court which is the proper place to see what the Law says and see if we were carrying it out, but the department says "no, we do not intend to follow any such procedure; we do not like your way of doing business and we are going to take your license away", and they did take it away and "You cannot do business any more". Well I couldn't see where they had any right to do that, certainly any legal right, so we resisted. The result was that after a lot of negotiations, with the department it was finally decided by the department that they would pursue the course of, probably a little more wisdom and weight, that we should make representations to them and that they should wait the result of this Commission before they would finally make up their mind what to do and the matter stands there but in the course of those negotiations they asked us to tell them why we objected and why it was unfair and the result was there was representations made in writing and I think that it would be better for me to read them because they do go into the matter quite thoroughly.

I say here:

"In protesting the present Fuel Oil License
"regulations, our company wishes to point out
"that they are in no way opposed to existing
"practices of the major companies in giving
"considerable free service, advertising, etc.
'the Act says that is against the law'
"including credit card service which adds between
"one and two cents of extra cost per gallon

MR. FRAWLEY: It is not against the Law to use credit cards.

MR. PLOTKINS: No, but it is against the Law to do this and do that and we will go into that probably in this brief.

"which adds between one and two cents of extra "cost per gallon on the gallonage sold on that "basis, as we feel that there is a class of "customer who wants this kind of service and is "willing to pay for it.

" On the other hand there is "a type of customer who prefers to do without the "frills and is ready to pay cash where there is a "saving by doing so, in lieu of such free service.

" What our company does pro- "test, is having the Government say that our "company and similar organizations shall have to "charge the same price as the major companies for "an entirely different type of service, and also "protest the fact that a large part of the buying "public should be penalized when there is no valid "or economic reason for so doing."

MAJOR LIPSETT: Was the point ever raised that the price which you were selling at being lower than the major companies' selling price, didn't you tell us that you were selling at two different prices.

MR. PLOTKINS: The Government was not complaining because our price was lower. There is no doubt about that. They were complaining because we were selling at two different prices.

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I have already gone into and I have explained we have to sell at two different prices to keep two different classes of customers, and also for the further fact that if we did not and complied with the Government demand and sold at our lowest price, we would be put out of business because the Imperial would go down some more. So that we had to face that situation and the official that enforces it don't consider our position. He only considers the Government position. But we have to consider the question of survival.

Selling merchandise on a quantity discount and cash discount basis is and always has been a recognized practice. If a man ships a carload of goods, he gets a carload rate instead of paying local and small quantity rates. If he buys three suits of clothes at one time, he will get a better price than if he buys one. If he buys a sack of potatoes, he will get a better price than if he buys 25¢ worth. This principle applies to all businesses and is good economics because where such quantity type of sale is made, it automatical lowers the cost per dollar volume of sale.

This should apply more to the petroleum industry than practically any other business owing to the fact that volume is the prime principle of the gasoline business. In other words, there are few businesses where additional sales volume will reflect as quickly in lowered costs. Our contention is that a man, company, or organization which uses gasoline in sufficient quantity and who is willing to pay cash is entitled to a better price than the casual purchaser or pleasure car driver who demands and gets much more service and accommodation in proportion to the number of

gallons he purchases. In other words, it boils down to the old saying "You get what you pay for". In connection with the aforesaid, we wish to point out that cash discounts are recognized trade practice in all businesses.

Our company, and to our knowledge no other independent organization, has never asked that the government legislate in our favor to assist us in maintaining our position in the competitive field. We are confident that we are efficient enough and enough on our toes to take care of ourselves with the help of anti-monopoly and anti-trust laws now in force throughout the country.

In other words, we feel that we can render a very valuable service to the public and progress from year to year as long as the government will not actually assist the major companies by favorable legislation and will enforce anti-trust laws and restrain the major companies from operating market organizations at a loss with the one idea in mind of actually clubbing out of existence the independent companies.

To-day that anti-trust law is all that is necessary and we do not need any other regulation.

MR. COMMISSIONER LIPSETT: Just to follow that up, supposing the Imperial Oil decided to take 3 cents a gallon off their prices with the object of putting you out of business to-morrow, how does the anti-trust law protect you?

MR. PLOTKINS: The Anti-Combine Act, as I understand it, prohibits any individual, firm or corporation, to do anything that will have the effect of destroying competition.

MR. COMMISSIONER LIPSETT: That would be increasing competition. It would not be destroying it. Supposing without consulting

with anyone they turned around and took two or three cents off the price of gasoline and continue that until you are put out of business. How do the anti-trust laws or the anti-combine law help you in any way?

MR. PLOTKINS: In the first place the Imperial is not a philanthropic organization. Now, experience teaches me if they are going to do us any harm in that manner they are going to do it in the normal orthodox way. And it won't put us out of business if we are able to retaliate in another way. So we are not asking for any laws to protect us against them. When it reaches the stage where it is against public interest we should have wideawake enough authorities to see that it is not permitted.

MR. COMMISSIONER LIPSETT: What I am trying to put to you or trying to get from you is, what difference does it make to your position whether the Imperial did that of their own iniative, without consulting anybody, or did it after consulting with, let us say the B. A., just to get an example. They decide they will join together and you would have a breach of the anti-trust law, perhaps. But if one does it alone you are just hurt as much?

MR. PLOTKINS: One alone is not likely to do it, and if they are, they are going to pay the price. If they are willing to pay the price and can accomplish something, well I suppose we will have to find something, some other way out.

MR. COMMISSIONER LIPSETT: Is not your real complaint that competition may be so intense that somebody, for some ulterior motive, puts you out of business. I do not see how the anti-trust laws affect it.

MR. PLOTKINS: Intense competition, if it is on a sound basis, is amenable to me or any other ordinary organization, to meet it. Intense competition does not mean that it is destructive. It may be that we are in a stage of technical advancement but because of the rapid change there is intense competition. But we can adapt ourselves to these changes just as good as the big company can. Therefore, we have not any claim on the Government to protect us. The only claim I feel I have on the Government is that by collusion individuals try to corner or to acquire control of the industry and we are just absolutely up a tree and we cannot meet it. That is the time we have some claim on the authorities. But as long as it is the actual development of competition or technology we certainly have not any right to stop the machinery just because it don't suit us. Because we are asking that same privilege for ourselves.

Any honest government knows that it is answerable only to the people as a whole and cannot conscientiously institute or permit any condition which would tend in any way to raise the price level over a period of years, which the public would have to pay.

It is a well known fact that the major companies, as particularly represented by Imperial Oil Limited, are definitely out to force the independent companies to raise their prices so that they may maintain their costly monopolistic setup. This monopoly can only continue through government support, whether knowingly or unknowingly.

I have pointed that out. The Imperial says: "Here is what it costs us to do business

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because here is the way we do business. We expect a fair profit and, therefore, we have set our price and competition allows us to get it." I see nothing wrong with that. We have our own conditions. We are trying to destroy that particular type of operation. Why? Because we want to better ourselves. Now, if there are laws to stop us, and this is one of them, all it can result in is a freezing of business into the hands of major companies and maintaining higher prices. Because you are allowing part of the competitive system to work and you are preventing another part and a vital one from operating.

Many theories propounded by men without practical experience look very beautiful on paper, but quite often work out just the opposite of what they are meant to do. We are willing to concede that many of the present regulations were drawn up with the very best of intentions, but because actual economics and good business practice was ignored, they worked out to the absolute detriment of independent companies and the public, and have reacted in favor of major corganizations and will eventually help swell the coffers of Standard Oil of New Jersey with more profits.

The foregoing is more or less a broad statement of principles which should be taken into account when considering whether or not the present Fuel Oil Licensing Act is practical or equitable. Before showing in detail many of the competitive phases, our company wishes to go on record that they are quite willing to serve the public with gasoline at prices lower than the present Imperial Oil prices as long as the government will guarantee

that the Imperial Oil and subsidiaries will not be permitted to use retaliatory clubbing methods or we are willing to maintain a retail price in line with theirs as long as they shall be forced to charge extra for fancy service and credit. Failing this, our company denies that the government should have the right to interfere with our business or with our right to look after our own interests in our own way. To be able to progress in the province as a local industry, and pay our way as we go, including collection of government gasoline tax and payment of all city, municipal, and provincial taxes, and to take care of our employees, and to secure a return on our investment, it is necessary that we in the organization who are trained and know the oil business much better than any government official, should be allowed to work out our own destiny and protect ourselves in our own way from the following conditions and policies as practised by the major companies:-

Now, the orthodox method of doing business is naturally reactionary. It attempts to maintain the status quo. And with reason. When we get to that stage we will do exactly the same thing. It is the natural law and they adopt the practice to that end. In other words, they create conditions that make the little fellow behave, make him sit up and put him in a position where he has got to more or less follow the orthodox practice. And that is calculated to consolidate the existing order. Probably quite legitimately. But it does not mean that these practices they have adopted are wrong. It does not mean that they are unfair. They are absolutely fair as far as the major companies are concerned. The only place where they are unfair is in a case like this where we

are told by authority, over which we have nothing to say, "You cannot do this and you cannot do that; you must do it the way the other fellow does it." Well, we will not guarantee that the reactions of the big companies will not put us out of business.

1. Major companies have secured control of production and refining to an extent where they can operate their marketing organizations at a loss or at least subsidize them in order to realize cash from the crude as it is produced and refined. The major companies have in the past paid fabulous prices for property and built thereon service stations which can never hope to pay a return on their investment. They have even gone so far as to build on one corner and pay a high price for the opposite corner merely to protect themselves against having any opposition.

Now, this morning Mr. Commissioner mentioned the fact we were bad boys , as I understood the question, because we more or less were trying to hit at the foundations of the existing marketing system of the Imperial Oil and we should not do that. Now, I wrote this a couple of days ago and I did not get it in my brief. But I think it is quite pertinent to cover that point. I say here:

Posted tank waggon prices are only the top of the market and competition in price below the existing tank waggon is expressed by discounts, such as undivided dealers' allowances of 1 cent per gallon, competitive allowances varying from ½ to 2½ cents per gallon reflected in Imperial's estimate of competitive conditions existing in each particular district, freight absorption such as in the south territory or l. c. l. shipments paid for by the

company, or cartage paid on inter-station transfers from a tank car point to another point, or again special agency commissions where competition forces this to retain the business.

Those are practices that the Imperial Oil has disclosed they follow and they cost the Imperial Oil some 1.2 cents per gallon over their entire gallonage. I see nothing wrong with that. They merely went out to meet competition and in the process of meeting competition they have, instead of cutting the price, they have paid for freight where they did not in other places. They have given special allowances where they did not in other places. They have given special discounts to one dealer because they had to in order to retain the business and they did exactly what they were complaining to this Commission we were doing, and what I understood the Commissioner this morning to say that we were doing. Well now, the only difference between them and us is they are doing it through their system and it does not show on the surface. But it comes out in the figures when you analyze the expense of their doing what conditions force them to do. And the result is that they go and pay a big price for a service station and go and buy two corners, one opposite the other, to stop somebody else from getting it, and they are not committing any crime. They may be unwise or they may be very wise. But they are following out the competitive system and conducting their own business and there is nothing wrong with it as long as we are not stopped from doing the same thing in our own way. Not necessarily going and buying lots or corners but in meeting the situation as we can.

MR. FRAWLEY: Holding corners is not reflected

in the Imperial marketing spread.

MR. PLOTKINS: I am not going to argue whether it is reflected or not. The fact is they have their way of doing business and they just express it in their own way. We have a similar want to get at that business and we want to get what we consider our share. We want to go out and meet the competiton . If they buy corners we might do somothing else. In other words, if they wish to subsidize a dealer in that way we might wish to subsidize them by giving them a better price. All right, they have expressed it in one way and we have expressed it in another. They are both legitimate, nothing wrong with it. As long as we allow competition to work.

Where they do not actually own a location, they have used a policy whereby they are willing to lease,bonus, or overloan merely to control the outlets. We can quote specific instances where major companies have leased outlets at a high rental and sublet to the owner at a low rental merely to secure control and to bonus the outlet. We can quote instances where the major companies are going so far as to pay the operator's rental to the owner of the property as an additional discount.

We can quite specific instances where the major companies are willing to loan more money on an outlet by far than it is actually worth merely to secure 100% control and to freeze out opposition.

These conditions can mean only one thing -- a higher established price to the public, and no obstacle should be thrown in the way by any government against any organization which can overcome a competitive

situation such as this and sell to the public at a reduced price.

Now the fact we sell one man at a different price than another, our evidence discloses that on an average we have distributed to the public at 1½ cents a gallon less than the Imperial. Now, does it make any difference to this Commission or to the Government whether this man gets it or some other man gets it. We do it by agreement. Both parties are satisfied; otherwise, they would not be dealing with us, and the economy is benefitted, that is the Provincial economy, in that 1½ cents on so many gallons has gone into circulation that they would not have had if they had bought from somebody else.

MR. COMMISSIONER LIPSETT: Does that mean that your distribution expense is 1½ cents less than the Imperial's?

MR. PLOTKINS: No, our distribution expenses are something like that. That is not the reason we save 1½ cents.

MR. COMMISSIONER LIPSETT: What exactly was it you were saying, I did not understand?

MR. PLOTKINS: I am saying because of our method of doing business, is one of the methods complained of by the Government by which we had two prices. But the nett result is of our method of doing business to save the customers, our customers, 1½ cents a gallone below the established general price as expressed by the Imperial Oil net-back. And we made a profit. In fact we made a big profit.

MR. COMMISSIONER LIPSETT: Do you mean that your selling price--

MR. PLOTKINS: Our net-back.

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MR. COMMISSIONER LIPSETT: Is around a cent and a half less than the Imperial price to the consumer?

MR. PLOTKINS: That is right, for the same product. The result was we did not do it at the expense of our employees. I have given the figures to show our expenses are a little higher than the Imperial's. So we did not rob anybody. We certainly benefitted our customers, and that was only made possible because we might use judgment. We are not restrained from doing it under our own methods and in our own way.

MR. COMMISSIONER LIPSETT: How does that stack up with the suggestion that we had before, that all the prices were the same. Was not that the general picture that we got, that prices at all service stations for the same grade of gasoline were the same?

MR. PLOTKINS: They are the same on the surface. And we were also told that, just as I expressed here, that the posted tank waggon are only the top. We cannot charge more because they won't buy from us. But there is nothing to stop us from selling for less.

MR. COMMISSIONER LIPSETT: This 1½ cents that you say your price is below the other companies', does that go to the dealer or to the consuming public?

MR. PLOTKINS: It goes to the public, both the consuming public and dealers. I am not saying our prices are a cent and a half less. I am merely stating that the general business when we figure it out on the basis of 1938 showed that we received for our gasoline in products, refined products, from the public, and that means to dealers and consumers, 1½ cents a gallon less on the average. That means there was one cent and a half less in our treasury and so the public

got the benefit of it. It makes no difference whether the puhlic got it through the dealer or whether he got it direct. The fact is the economy of the country got it.

MR. COMMISSIONER LIPSETT: You mean your net-back to the refinery was this much less than the net-back to the larger refinery?

MR. PLOTKINS: Well, it was based on the Imperial. That is right.

MR. COMMISSIONER LIPSETT: If that is so and your suggestion is that that goes to the public, why is it not so advertised that you are selling at a cent and a half less?

MR. PLOTKINS: Because when we do business in competition with other companies that way their customers - in the oil business----well, we will take the service station. Our Edmonton service station, we have different classes of customers. We have the transient man who pays exactly the same price as what he can buy at anywhere else, the posted tank waggon rprice.

MR. FRAWLEY: Sometimes called the "sucker" trade?

MR. PLOTKINS: I would not say he is a sucker. He is not. He is getting the value. Another thing is he is doing it of his own free will.

MR. FRAWLEY: But he does not know you have another price for the next fellow?

MR. PLOTKINS: Possibly he does and possibly he does not. I would not say anything. We do not expect to give him any better price because he is liable to buy only 1 gallon and want his wind-shield wiped and probably his carburettor fixed, and objects to paying anything for the service. That type of customer requires a lot of service. He gets value for the money. Our second class of customer is

what we call the commercial account. That is the commercial consumer account. Some of the other companies recognize the commercial consumers only as industrialists. We recognize the commercial consumer account as the man who has cars or trucks. That type of customer pays 1½ cents a gallon less or more. Then there is another type of customer, that is the drum trade. Now, the consumer, on an average our prices are a cent a gallon less. They have been. They are not now. The result is we cannot make an average reduction of 1½ cents to everybody because that reduction to 1½ cents would lose us two-thirds of our business because it would be giving too much to the man who is not expecting it and not giving enough to the man who could get something more somewhere else. I do not know whether I have made that clear.

MR. COMMISSIONER LIPSETT: I think so, Mr. Plotkins.

MR. PLOTKINS: The specific complaint by your government in suspending our Edmonton retail fuel oil licence was that we were discriminating in prices to our customers.

We pointed out that we were not doing anything that any other company was not doing, only that we were doing it in a systematic, honest, above-board manner.

I wish to say particularly with reference to what Mr. Frawley has expressed, that we do do it openly. We have posted a price showing the drum, commercial and retail prices posted in our service stations. It is true we do not put it in great big letters, but it is there available to the public. We actively solicit the transient trade, the commercial trade to become commercial consumers of ours so as to get quantity purchasers, and it

is to our interest to do that.

We pointed out to various officials that all companies give discounts to trucks, commercial accounts, fleet owners and 100% accounts.

We pointed out that Imperial Oil had deals with the head offices of different companies."

This has been denied so I do not think it is true about these fleet arrangements. That was the information I had but apparently it has not been substantiated.

"whereby they give a flat discount throughout Canada and that we could not possibly hope to secure any of the business of these companies without meeting the price.

We pointed out that it was common useage throughout the province to give a 2¢ per gallon discount to steady truck customers.

We pointed out that the major companies had many accounts such as C. N. R., C. P. R., Swift Canadian, etc., who receive discounts probably greater than any of us are aware of, and that, comparing capital invested, much smaller accounts than these were just as important and as much entitled to special consideration as the larger fleets served by the major companies.

These conditions are admitted by the government officials who stated that no doubt it was a condition impossible to overcome but that stlll regulations were regulations and we must live up to them. It would look to our company as if the shoe of discrimination was decidedly on somebody else's foot than that of our organization. If it is against the law to have more than one price, it should

be against the law for everybody and any deviation not subject to government approval, which is the case as stated by government officials.

In bringing these aforesaid matters to the attention of your government, we are doing so entirely to provide a proper light upon the situation as a whole, but wish to take the decided stand that we do not recognize the right of the government to legislate or control our business or our means of operating same particularly when it is open to plain view that such control tends decidedly to operate in favor of major monopolistic companies and against smaller independent companies.

Our Premier, Mr. Aberhart, and our Minister of Trade and Industry, Mr. Manning, have always declared in favor of local industry and in favor of the little fellow. It is hard for us to understand why the head of the government should take this viewpoint while actually the regulations as set up by various departments have an exactly opposite effect.

We place these representations before you, asking that you consider all phases carefully and give us fair and honest treatment.

Now I do not want to deal with all the regulations. There are quite a lot of them. We have interpretations and rulings that thick, and we are no better off after we get the ruling because the circumstances change and the ruling is affected. So that we attempted for a long time to carry out regulations and found it was impossible. So we have gradually disregarded them. Nothing

else could be done. If we had carried out all the instructions we would not be in business to-day. I could not afford a staff to carry out the multitude of obligations that is imposed on us under the different regulations. Now, I have pointed that out in the course of the evidence that the smaller the company the greater the burden, because there is just as big a burden for us, with our limited gallonage; we have just as many laws to comply with as the Imperial Oil with its big gallonage. It is just the same as distribution, if you can spread that cost of observing the laws and carrying on the red taps, over 10 million gallons instead of over half a kmillion, the burden certainly is not equal. And that is one of the reasons we were just compelled, little by little, to just forget about them because they were too great a burden. Now, I want to finish this remark here in regard to discounts and competitive prices.

It is self-evident that the tank waggon price is the normal price and only where pressure of competition demands it to obtain or retain the business is the tank waggon price lowered. In other words, the tank waggon price is just the normal top price. If I go into a place and I want to get some business and that business is desirable, well, the man, if he likes the company he has been doing business with and his relations are pleasant and he has no reason to leave them, now I have got to, if he is perfectly satisfied and if I want to do business with him, the only way he will do business with me is for me to give him some concession. It does not mean I have got to give him a better price. Or it may be that is the only condition he

will do business with me. On the other hand, he may want me to put up two new pumps, or he may want me to paint his building at a cost of several hundred dollars. Or he may want me to help him financially because he wants to build a new house. Or he may want one hundred and one things that have developed as concessions, as we understand them in the oil business. Now, I have to judge, how much is it going to cost. What gallonage has he got. I express it in net-back to me. If a man sells 100,000 gallons and he expects me to do something that is going to cost me $1,000.00 I just say to myself "He wants me to give him a cut of a cent a gallon." Now, I have not reduced the price, it is true. But I have given him $1,000.00 in another way. It has cost me $1,000.00. Now, you can investigate from now till Doomsday and the entries will still show the regular price and it is the regular price he is paying. But because of the fact I want that business I have adapted myself to that situation and have lent him money or given him some pumps for nothing, or probably invoiced him and forget to collect. Anyway, that accomplishes what he wants because he is the buyer.

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Now that is expressed every day in business and it is the sum total of all these things that constitutes the net back, so the posted tank wagon price is intended to do that with the actual price, the actual price is what does the company get back and the evidence shows that they get back, in the case ---

THE CHAIRMAN: How do you feel about that being a satisfactory method of competition?

MR. PLOTKINS: That is our experience.

THE CHAIRMAN: Would you not rather be working in the open and meeting your competitors in the open?

MR. PLOTKINS: True, that is the way I would like it, why, because I would be better off, much better off.

THE CHAIRMAN: That is what I mean.

MR. PLOTKINS: Because my aim is to know what is going on and if it is secret I have to guess what it is that is going on and if it is open I am in the same boat as the others but I know that laws will not accomplish that. And because I know that, I am not coming here to ask for some Legislation about it but I do know that, because of the fact that we have a fear in the oil business, one company against the other, that if we could get together and decide on these different business practices and put them out in the open and say, "Well now, this is as far as we will go, as far as we will agree to go in the matter of rebates and loans and pumps and so forth", although I do not know ---

THE CHAIRMAN: Well now, supposing you did, supposing you did and leaving aside for the moment the considerations that there may be a monopolostic tendency involved in there-----

MR. PLOTKINS: Yes.

THE CHAIRMAN: But leaving that aside, would you not be up against the same thing once more, you agree on it and the fellow who stuck to his agreement would do it and the fellow who said, "Well I want to get a little business advantage over my competitor," would cause trouble?

MR. PLOTKINS: No, I do not think so, Mr. Chairman.

THE CHAIRMAN: Why not?

MR. PLOTKINS: For this reason, the agreements in the past have been agreements forced on the industry by some outside body.

THE CHAIRMAN: Yes.

MR. PLOTKINS: In the United States we have the history of the Federal Trade Commission, we have the history of the N. I. R. A. It is true the oil business got together and told the Government what they would do but they told the Government the same as we may tell it, we do not need legislation but I will tell you what I think should be done, in other words, if you will not agree with me that there should be no interference with the competitive system, then I say if you are determined on having legislation here is the way to go at it to do the least harm. Now in the United States the same situation exists. The industry because of the laws there cannot get together. It was a crime to get together, probably right. I am not satisfied that even the industry would do justice to the public but it is against the law and the only way they could get together was to be brought together by the Government and the Government dictated the conditions. Well now each one jockeyed for position because there was still going to be a Government Board, with favors weighing in the

balance, because I know by experience, not that you can bribe them, no, but if you get to be well liked by this individual or that individual and you have the machinery to make yourself liked, you are liable to get more concessions or a better interpretation or a little more lee-way, it is natural, I mean, with the result that if you had the staff and the time and the utility to be up at the Government Offices practically all of the time, you are liable to work very nicely under a certain regulation and the other fellow who is just busy, with his nose on the grindstone, he is forgotten because he is not there to protect himself, so the result is that the regulations react better for some than for others.

Now coming back to this matter of these different business practices, I believe that we have the machinery, I have suggested to the Government and they have agreed with me as to the method that it should be done. Not that I say it is going to succeed, I do not know. It is certainly worth trying but I think it will succeed much better than regulations imposed by the Department itself.

Now I will review those because I think they are worth considering and another thing in deciding on these things the same things applies, the same principle applies with respect to trying to correct these business practices as applies to all economic matters. We cannot do it overnight. We are going to have to take it up in the industry and let us say, "Here is the fear, here is the difficulty, now study them and let us come back in two months or three months if you have had time to study them, let us figure out what you are going to do and let us take time to do it.", and if it is done that way it will endure

[illegible]

[illegible]

most likely because it will be done with the least chance of errors and if there are minor difficulties, minor differences that will creep up, we can correct them. We do not have to tear the whole thing down over again, whereas if we rush up to Edmonton and have two or three conferences with the Government under pressure, because that is all it is, you rush up there, you know you are not going to have very much to say, you know your evidence is going to be weighed, maybe, and maybe not and the result is you go up there determined to jockey for a position and the bigger the company the bigger the position.

THE CHAIRMAN: I am sorry, Mr. Plotkins, to interrupt you, you see yourself some possible disadvantages in the elimination of the anti-trust laws, combinations in restraint of trade and those kind of things as I understand it. You realize the evils which may flow from the elimination of all those laws.

MR. PLOTKINS: Yes, I believe they should not be eliminated but strengthened.

THE CHAIRMAN: Yes. Now then you say, notwithstanding the benefit that may come from those laws being upon the Statute books, that they present difficulties to those who want to arrive at agreements that would be beneficial not only to the industry but to the public as well.

MR. PLOTKINS: Yes.

THE CHAIRMAN: Now how better could you get together for the working out of an agreement satisfactory to the industry, than under the agency of some independent

body that was interested in your arriving at agreement and those persons would definitely protect you against the stigma of conspiring to restrain trade, through legitimate channels and which would also protect you against prosecution.

MR. PLOTKINS: I quite agree with you, Mr. Chairman, and that is the method which I have recommended. It is not quite in the shape of a Board but when-----

THE CHAIRMAN: I mean there is nothing in a name.

MR. PLOTKINS: But the principle is the same as you have just enunciated.

THE CHAIRMAN: Well it is interesting to have one who is concerned in the oil industry to accept such an idea. Others seem to shy back from it, feeling that they may have someone occupying a managerial position in connection with their business if they ever opened the door. How do you feel about that.

MR. PLOTKINS: Well the system that I have recommended certainly prevents the Government from starting to legislate or to want to control the managerial operations of the company. They sit in and they control the operations of that particular committee and they act when there is a prosecution to take place and they are the link between the authorities and the industry but their functions are limited to helping straighten out maladjustments.

THE CHAIRMAN: And you see the danger of that the link of which you speak being some part of the Civil

Service, which may be concerned with multitudinous other duties, either not having the time nor the specialized knowledge that make them really the proper liason officer between industry, the public and the Government.

MR. PLOTKINS: That is true, sir, and the only thing I happen to pick the Department of the Government of the Province of Alberta that is now concerning itself with just such things and no doubt in time will acquire experience and they have had already some experience, that is the Board of Industrial Relations. Now at the present time they only concern themselves with labor but I pointed out to the Government that the employers have just as much right to organize for themselves as labor has and that the same Board, with the co-operation of the industry, should concern itself with our welfare and the result was that there was a link already available and working and as I expressed before in my testimony I do not know if I did here, I certainly expressed it to the Government, I was agreeably surprised to see this Board of Industrial Relations functioning in what I considered was a workable basis and I will go into that when I present that matter. I am not saying that anything the Government has done is wrong. There are things they are doing that are right and other things that are not, at least getting somewhere in some of them.

"It is self-evident that the tank wagon price is the "normal price and only where pressure of competition "demands it to obtain or retain the business is the "tank wagon price lowered and as evidence discloses, "amounts to, in the case of the Imperial, reduces the

"weighted average net back on the three grades of "gasoline from 16.03 to 14.83 or 1.2 cents per gallon, "according to Mr. Cottle's statement, Exhibit "653". "

Now that 1.2 cents per gallon has just repaid for commissions or loans or pumps or something for which they do not get some money. We do not claim to be any better or any worse than they are. We just say they are meeting competition and we want the same privilege.

THE CHAIRMAN: Just while Mr. Plotkins is pausing, Mr. Frawley, I see Mr. Brownlee is here from Edmonton, you asked him to come today?

MR. FRAWLEY: Yes, I asked him to come today.

THE CHAIRMAN: I do not want to hurry you in the least, Mr. Plotkins, and I want you to know that, we always feel we get some benefit from hearing you but we may want to intervene Mr. Brownlee to let him go home again if you are going to be so long that he cannot finish today. What do you think about that, Mr. Plotkins?

MR. PLOTKINS: I think that I should finish inside of an hour and possibly before.

THE CHAIRMAN: An hour from now?

MR. PLOTKINS: Yes.

THE CHAIRMAN: Then, Mr. Frawley, I wonder if you would find out, I see Mr. Brownlee is not here at the moment ---

MR. PLOTKINS: I will gladly concede my place to Mr. Brownlee if he has to go tonight.

MR. FRAWLEY: Yes, I think he wants to go tonight if he can.

MR. PLOTKINS: I do not like to but I will do it.

[illegible]

"Wafer-thin [illegible] grades of
"[illegible] to 14.8¢ or [illegible].3 cents per gallon,
"[illegible] Pillsbury's statement. Exhibit "E".
[illegible] 1.3 cents per gallon
[illegible] purchases or loans or purge of southern
[illegible] not lose money. [illegible] plants to
[illegible] so than they are. We just say they
[illegible] and we want the same utility.

[illegible]: Just while Mr. Nicholson is [illegible]
[illegible] I see Mr. Dreyfus in here from Houston, you
[illegible] here today

[illegible]: Yes, I asked him to come today.

[illegible]: I do not want to hurry you in
[illegible] Nicholson, and I want you to know that, we
[illegible] feel we are more benefit from keeping you, but we may
[illegible] to intervene in. Provided to let him or more section
[illegible] to be [illegible] that he cannot finish today.
What do you think about that, Mr. Flournoy?

Mr. NICHOLSON: I think that I should finish
[illegible] before [illegible] today before.

[illegible]: [illegible] from now?

Mr. [illegible]: Yes.

[illegible]: Then, Mr. Crowley, I wonder if
you would find out, [illegible] Dreyfus is not here on the
moment ---

Mr. PUCKETT: [illegible] clearly corresponds by [illegible] to
Mr. Dreyfus is [illegible].

Mr. [illegible]: I think [illegible] to [illegible]
if he can.

Mr. PUCKETT: [illegible] but I will [illegible].

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THE CHAIRMAN: I do not want to interrupt you. Mr. Brownlee, we were just speaking of meeting your convenience, you having come here to address us today and we undorstand you want to return to Edmonton tonight. Can you give us some idea how long you expect to take?

MR. J. E. BROWNLEE, K. C.: Well, in the first place, may I say that we are entirely at the convenience of the Commission and if you do not finish with Mr. Plotkins this afternoon, the organization which I represent can say what they have to say equally well tomorrow so I would not want you to change any of your plans just by reason of us. What I have prepared to read will take probably half an hour at the most. Then, of course, it would depend on whether there was anything arising out of that but I want to make it clear again I would not want you to change your plans because of us because we are only too anxious to meet the convenience of the Commission and I am just as well content to allow Mr. Plotkins to finish his argument and we will come on after it.

THE CHAIRMAN: Very good.

MR. PLOTKINS: Now this question which we have just discussed has been concerning me for some years because I felt that the more information the Government had the better we would get treated so in 1936, on March 17th, I wrote to Mr. E. C. Manning, Provincial Secretary, as follows:

MAJOR LIPSETT: What is the date?

MR. PLOTKINS: March 17th, 1936.

" In accordance with your request
"expressed at the meeting of the representatives of
"Alberta oil companies that took place last Wednesday,
"March 11th, 1936, I will endeavor in the short time at

"my disposal to make a few suggestions for your guidance
"in attaining the end desired, namely, reduced prices
"of gasoline in the Province of Alberta."

No, that only deals with it briefly. I think I will get you another one, this is dated January 10th, 1938; the other one did deal with it but only in a brief way and just giving general principles. This one goes into it in detail, January 10th, 1938:

"Memorandum; Government sponsored oil conservation and
"self-regulation for the Alberta oil industry."

" In accordance with your request
"made to me some time ago when you accorded me the
"privilege of expressing my views on the general Alberta
"oil situation, I now submit for your study and consider-
"ation this memorandum.

" The views and proposals expressed
"herein are not calculated to cure all the evils nor solve
"all the problems of our Alberta and Western Canadian Oil
"Industry, but rather to create a condition whereby the
"problems arising from our present circumstances will
"be dealt with by a body of men experienced, each in
"their line, co-operating together with the Government
"Agencies concerned and the public, to treat each problem
"individually in a rational and equitable basis having
"proper regard to all interests concerned, and as a primary
"concern, the general good, present and future.

" The Alberta industry has, in the
"past, more or less made its own law, run its own business
"without proper regards to the other fellow or the public,
"and the oil business being more or less a mystery to the

"average man; public opinion was powerless to react.
"Subsidiaries of American concerns, meeting no opposition,
"soon established themselves in a dominating position that
"brooked no native resistance and crushed without mercy,
"any local factor that disputed or was likely to dispute
"what they considered their field."

Now this is not recent, it has been in the oil business for a long time. I read in that congressional record where they bought out refinery after refinery and they have been doing that for the last 60 years, so it is nothing new and nothing provincial.

" In Alberta the Government did not
"become interested in the oil business until very recently,
"with the result that no competent Government Body was
"trained that would cope with the industry and would be
"able to advise the Government in the complex matters of
"producing, refining, and transporting and marketing of
"petroleum products, so that the public interests could
"be protected at the beginning of the industry in Alberta.

" This condition made possible the
"situation whereby the major companies being practically
"the only ones in the field able to present a plausible
"line of conduct, could and did present their side of the
"picture only to the Government who were dealing with
"problems with which they were, most of the time, not
"fully conversant.

" This resulted in legislation that
"the Government intended to protect the public interest,
"but usually resulted in consolidating and strengthening
"the dominant position of the major companies in Alberta

[illegible] powerless to react.

[illegible] meeting no oppositi[illegible]

[illegible] commanding positi[illegible]

[illegible] and ordered, without [illegible]

[illegible] the disappearance [illegible]

[illegible]

[illegible] It has [illegible] the time. [illegible] that [illegible] report where they would [illegible] nothing after [illegible] years, [illegible]

[illegible] efforts the Government [illegible] until very recently, [illegible] most body was [illegible] in the employment [illegible] the complex pattern of [illegible] monopoly [illegible] public interests [illegible] the industry [illegible]

[illegible] the majority [illegible] price policy [illegible] consistently [illegible] to present [illegible] planning [illegible] their side [illegible] government.

[illegible]

"and for the proof of this contention you have only "to see the record low prices for crude, high prices "for gasoline and other refined products, high import "duties, excessive distributing facilities, etc.

" While it is true that prices of "gasoline did come down from 1920 to 1936, the reduction "in price did not correspond to the reduction in costs "due to technological improvements in all branches of "the industry. I do not think it is necessary to go "any further in this direction."

Then again, what is known as the jobber, as we understand it here, if there have been more jobbers in this province, even to the extent of what they existed in the average oil centre in the United States right from the beginning, we would not have these conditions. There would have been more competition and the result would have been a different set of circumstances, but today jobbers are really not known. Two or three independent jobbers in a territory like this where normally there should be 15 or 20 and the more jobbers the more competition. It does not necessarily reflect high prices. It is just the position I have demonstrated many times and I have tried to prove it in my argument.

MAJOR LIPSETT: Mr. Plotkins, are you not there advocating Government interference?

MR. PLOTKINS: I am advocating that the Government enlighten itself on all the problems of the oil industry and while I make that statement, that is a problem which is one of the functions of the Government, to become enlightened on the problems of the oil industry.

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While the Honourable Mr. C. C. Ross was Minister of Lands and Mines, the Government spent some money and had some geological work and research work done and he got convinced that there was crude oil in Turner Valley and the result was there was some encouragement. Now that is a proper function of the Government but I am not advocating in here that the Government should start in to run our business. I am admitting that they are interested and I consider they are interested.

MAJOR LIPSETT: Are you not advocating that they should make such research as to make crude oil available to you for your business?

MR. PLOTKINS: Yes.

MAJOR LIPSETT: Are you not asking for their help to get you your raw materials?

MR. PLOTKINS: Yes, because they are not helping me alone, I am only to get three meals a day and I will have to abide by it as anybody else and any surplus that I create while in the country, I will not take it with me nor anything I create or the Government creates or bring it into being, it not only helps the individual, it helps the individual less, it helps the country most, so any national work, any work by the Government on a national basis or on a provincial basis is certainly an obligation of the Government because it benefits the Government and the people more than it does the individual.

MAJOR LIPSETT: Yes, and yet do you feel that they should assist you to get the raw material which would be for the public benefit?

MR. PLOTKINS: Assist me, why me, assist everybody.

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MAJOR LIPSETT: Well assist everybody, and having got that raw material which you will retain, do you not think that they should equally see that you will use that not for the benefit of the individual only but for the benefit of all?

MR. PLOTKINS: But, Mr. Commissioner, the competitive system insures that, with the help of the Government, I have explained time after time that the only way I can benefit is to give the beneift, most of the benefit to the public,

MAJOR LIPSETT: Do you think up to the point of getting the raw material it should be a Government matter?

MR. PLOTKINS: Oh, no.

MAJOR LIPSETT: To help in research and so on but after that they should give the competitive system, to assure that that benefit which they have had to create would be fairly distributed.

MR. PLOTKINS: No, that is not exactly the position I take. In the first place the Government benefitted itself by the development of oil because they owned the oil in the first place, so in anything they discover they benefit,

MAJOR LIPSETT: You mean the people?

MR. PLOTKINS: Yes, the people, so if they have the initiative to go out and help discover oil the same as any other , that is the first place ---

MAJOR LIPSETT: Then why should they not go further and see that the public gets the benefit?

MR. PLOTKINS: Has private industry fallen down, that is the first thing. Well, I maintain they have not but I do not maintain that they are perfect and I do maintain that human nature being what it is, it needs some curb and the curb here is in the hands of the Ottawa authorities and is available

to the provincial authorities.

MAJOR LIPSETT: Does not that mean, whatever authority is that curb, just to see that everything is done fairly to the Government?

MR. PLOTKINS: Oh it may be unfair as between individuals, but it may be perfectly fair to the country. I mean the fact that I have a misfortune, it is certainly unfair to me but maybe I brought it on myself.

MAJOR LIPSETT: But does it not mean that there should be some public authority interested in seeing if a curb is necessary and if so to carry it out?

MR. PLOTKINS: Yes, I believe that the Government should be on the constant alert and through competent men in the different departments or whatever body of men you can get together, I do not believe in getting a hordo together but I will explain what I mean, what I am getting at there, but I do believe that the authorities should be competent to keep a constant check, not only on the oil industry, - the oil industry is probably no worse than any other, - but on all industry, on all economic industry for the commongood and the only way they can help is not by butting in but by acquiring information, first to disseminate it for the industry's benefit and second to give them the information they need to get a proper interest in it and then the main thing is to see that the proper interest is at all times protected and the only place the industry can go against the public is when they conspire to do things.

THE CHAIRMAN: What do you think, Mr. Plotkins, apropos of what you are thinking of, a Chair in the University, a Chair being set up in the University, what do you think of that?

[illegible]

[illegible]

[illegible] the proposed committee.

[illegible]

[illegible]

[illegible]

MR. PLOTKINS: Well I have advocated that and I made the remark that there was a lot of work represented by all these Exhibits and all these books and they really contain the essence of the oil business and I think I made that remark here.

THE CHAIRMAN: I think Mr. Shaw said something about that.

MR. PLOTKINS: Yes, you are right, I asked him to make that remark at the time.

THE CHAIRMAN: I do not remember you expressing any opinion personally.

MR. PLOTKINS: Now that would be desirable for the same reason that a Chair of Political Economy is desirable and the more information that the public and the Government has and after all, as I said, Science is nothing but ordered information, ordered facts. The better we are going to be able to overcome all our own disadvantages, because the reason I give a pump or the reason I loan some money to somebody is because I fear the other fellow is going to do it and I do not know whether he will or not but if the statistics, for example this information I have just read that the Imperial gives away 1.2 cents per gallon to get business, if that was available for us, we would gradually get an idea what they give away and accordingly it would disappear of its own wish, - why because if we all done it there is no advantage in doing it and the result is, if the Government, through the University is one way, in fact that in addition to other methods, they should do more, in fact they should train economists, some that will specialize in the oil industry. Others will specialize in other industries and the information is available

and these men, I do not know if the Chairman knows this but in France the Universities are all public institutions, and the Government reserves the right to take the three or five top men in each class, they sign an agreement that if their tuition is to be furnished them free, the Minister of Public Works for instance has the right in the polytechnical school of getting the five top graduate men, in the Department of Ponts et Chausses, which means roads and bridges. Now the best men, the most brilliant minds out of those universities are reserved by the Government and the Government takes an intelligent interest and the result is that the Civil Service is a profession and I do not know if it is any better than in this country, I do not know but I do know it is certainly worth considering in Alberta that where we sponsor and pay for all this education that the Government should begin now to get a capable personnel and have a section of the Government that concerns itself with economics and this is a good time to start. I advocated this 6 or 7 years ago. In 1932 I asked the Minister at that time to make a study of the oil business before we had gone very far and in such five or six years from now you will have a personnel capable of advising the Government. It was not done. Some like Mr. Frawley spent a lot of time and acquired a certain amount of knowledge but because of its disconnected ---

THE CHAIRMAN: He had other duties too,

MR. PLOTKINS: Yes. Well it is some use but you know some times a little knowledge is worse than none and you come to false conclusions. Now coming back to this university ---

MR. FRAWLEY: You do not know how true that is.

[illegible]

[illegible] I [illegible] it [illegible] the Minister upon this
but in fact the universities are all public institutions,
and the Government based on the right to take the three or
five to run [illegible] alone. They also [illegible] that it
[illegible] to be [illegible] upon them, the [illegible]
[illegible] have the [illegible] the right to the [illegible]
[illegible] or [illegible] the five top [illegible] in the [illegible]
of [illegible] at [illegible], which [illegible] [illegible] and [illegible].
The last man, the most [illegible] which out of [illegible]
are [illegible] by the Government and the Government takes a
[illegible] interest and the result is that the City Service
is a profession and [illegible] [illegible] if it is any better than
this country, I do not know but I do know it is certainly
worth considering in Alberta that where we [illegible] and [illegible]
all this education that the Government should begin now in
a [illegible] personnel and have a section of the Government
that [illegible] itself with [illegible] and this is a good time to
start. I advocated this 6 or 7 years ago. In 1920 I asked
the Minister at that time to make a study of the oil business
before we [illegible] [illegible] and [illegible]
[illegible] will have a personnel capable of advising the
Government. It [illegible] years. [illegible] like Mr. Dowling [illegible]
a lot of [illegible] and [illegible] a certain amount of knowledge but
because of its disconnected ----

MR. [illegible]: [illegible] times too.

MR. [illegible]: Yes. All it is [illegible]
[illegible] down a little [illegible] [illegible] is worse than [illegible]
[illegible] for [illegible] [illegible]. [illegible] back to this
[illegible] ----

MR. [illegible]: [illegible] [illegible] [illegible] is [illegible] [illegible].

MAJOR LIPSETT: I suppose that is why you refer to Mr. Frawley's great knowledge?

MR. PLOTKINS: Well he has an extensive knowledge of the industry but unfortunately, because he has not had the practical experience or has not been able to devote all his time to it, he is not able to give the proper weight and appreciation to all the facts and come to any, in all cases, to any sane conclusion and I do not claim to be any better. There are some things that I as.ume and I am wrong but there are some things that I know what I am doing, so that is the situation there.

THE CHAIRMAN: Do you think Mr. Frawley should start and work from the bottom up?

MR. PLOTKINS: Well as I remarked in my brief, Mr. Frawley has a different type of mind, probably the legal mind, but when it comes to economics he seems to have quite a time grasping the facts and interpreting them and we have seen the way the average individual reacts so that he may not be the right man for that. He may on the other hand be the right man for certain phases of that business, just the same as I pick men that are adapted to certain parts of our business and are not adapted to others. We cannot know everything and we cannot adapt ourselves to everything. One man is a good engineer in one line and another man a specialist in another line.

Why? Because he happened to like it and he happens to be naturally inclined that way. So I am not making any reflections as far as Mr. Frawley is concerned. I am merely stating the facts as I see them.

"The pioneers in the development of producing, refining and marketing of petroleum in Alberta who have attempted to create a native industry, independent of the major companies, have been seriously handicapped in their endeavours by the lack of interest on the part of previous Alberta Government bodies, and I pay tribute to the present Alberta Government for having intiated an aggressive oil development policy, which has resulted in emancipating Western Canada from imparting foreign crude oil."

MR. FRAWLEY: From importing what?

MR. PLOTKINS: "Which has resulted in emancipating Western Canada from importing foreign crude oil."

MR. FRAWLEY: You revised that. Western Canada West of Portage la Prairie.

MR. PLOTKINS: It is not desirable that we have it 100%. It is better to have a little opening at the Line to ensure there is going to be a little competition.

"But in all my contacts and negotiations with the various Government departments concerned what rendered any intentions of the government

"sterile, was the lack of continuity in Personnel and the lack of co-ordination between the different departments of the Provincial Secretary, Lands and Mines, Trade and Industry, Board of Public Utility Commissions, and the Attorney General's Department.

"This resulted from the fact that co-ordination of effort or policies was impossible as no one was being trained and placed in charge to handle his Department's interest in the industry as a whole and in relation to other government departments.

"Under these conditions each company took all it could get, intrenched itself as much as conditions would permit and now to straighten out the whole situation, so as to properly safeguard the public's interest as well as give equitable treatment to all sections of the industry, will require the patient and continued efforts of both a competent body of government representatives and the best brains of the industry, both major and independent.

"To conserve the large crude oil deposits that the Government has been instrumental in bringing into production, enhance its value to the country as a whole, we must seek to stabilize the production of crude

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"oil to actual requirements, stabilize the refining and marketing and of the business by reasonable regulations adopted by the industry itself, supervised and policed by a Government agency with the power to enforce compliance to protect the public against monopoly and wasteful trade practices.

"The profitable branches of the industry, are the production and pipe line, producing over half of all the profits of the industry and these by their very nature control the other branches of the industry and all their problems are not amenable to solution through self-regulation by the industry, and experience has demonstrated require Government regulation, but even in this phase better and more equitable solutions will be found by co-operation within the industry with Government sanction as production of crude oil must be limited to actual demand if prices for crude and the finished products are to be maintained at economic prices to the industry, the government and the consuming public."

Now here I am at variance with what I have expressed before, because at this time I was obsessed with the idea that I should not be called upon to pay more for my crude than the other fellow, and I thought that the market was in the open and the posted price was so no one could buy it for less that I would be protected. But I have since seen the fallacy of that

viewpoint because it just meant I was tying myself to a system that was rigid and just meant I was just plahing into the hands of the philosophy expressed by certain interests in the industry that want absolute rigid control of prices.

> "The alternative is wasteful over-production, ruinous prices for crude oil and refined products, loss of employment to thousands of workers, loss of revenue to the Government, ruin to the industry with no benefit to the general public,"

In other words, I had been sold on the general industrial idea but since that time I have spoken to a number of men competent in the business and reviewed the situation thoroughly and have come to the conclusion that it could still be done without creating waste but not necessarily with the primary purpose of fixing prices. Because that is the result of that kind of policy.

> "After studying all the different aspects of the industry in Alberta and basing it on my knowledge of the business in Alberta since 1920, I have concluded that to lay proper and orderly foundations for a rational oil industry in Alberta, a body of men, let us call it, a Conservation Board should be assembled by the industry consisting of a producing division, comprised of one man from the major producers and one man from the independent producers; a refinery division comprising one major and one independent refiner representative; a

"marketing division comprising one major and one independent representative; a division for pipe line, railroad and truck transport, comprising one major and one independent representative. These eight men would, with the Government appointing a chairman, constitute the Conservation Board, and act between the Government and the industry, and would be able to handle with competence, any questions or problems of policy or taxation which either the industry or the Government submitted to it. This board would act as a cushion between the Government, the industry and the public and soften any shock of taxation or drastic regulation if it became necessary."

In conservation and pro-ration drastic regulation is necessary because you are trying to hold down production to a given figure and you need the assistance of the industry, or you need a big interest in the industry.which can clamp down and say "This is the way it is going to be done." If you divorce pro-ration from conservation, stringent regulations are not in order because they must have the co-operation of the industry if they are going to be enforced.

THE CHAIRMAN: You say there should be no pro-ration at all, at least limited only by the maximum or minimum fixed as the proper measure of engineering efficiency?

MR. PLOTKINS: That is right.

THE CHAIRMAN: You say if a well may,

without harm to itself or harm to the field as a whole, produce so much in a given day it is in order that that well should be allowed to produce it.

MR. PLOTKINS: That is right.

THE CHAIRMAN: Regardless of the market's needs of that day?

MR. PLOTKINS: Well, the market need is a relative figure.

THE CHAIRMAN: Well, the known marketing requirements. You might find some other market, that is true. I recognize that.

MR. PLOTKINS: That is right.

THE CHAIRMAN: I understand that point. I am just repeating it for the sake of clarity.

MR. PLOTKINS: I do not want to repeat it. But here I want to express in a very short paragraph, I want to show that the industry, when they talk of proration they mean price fixing. Here is Mr. Axtell J. Byles, the President of the American Petroleum Institute, and I think he is also president of one of the Standard Oil Companies but I do not remember which one.

Now he deals with the situation. This address is dated Stevens Hotel, Chicago, Illinois, November 16, 1938. He deals with the general questions and then there are two or three paragraphs I am going to read in connection with pro-ration.

> "Any economist will admit that the nearer an even production rate is attained throughout the year, the better. This not only is economically sound, but it is true from the standpoint of conservation and from the stand-

L. L. Plotkins.

"point of everyone engaged in the industry whether he be wage earner, producer, transporter, refiner, or marketer, and for the consumer himself. Violent fluctuations in any industry are not in the interests of anyone."

Then he says:-

"At this point the question may properly be asked as to what effect the perfection of conservation control by the petroleum producing states will have upon the non-producing states, or, to broaden the question, what effect upon the consumer who, by the way, many times outnumbers the producer even in the petroleum states themselves. Is it not reasonable to believe that state conservation authorities, even were they so minded, could not politically survive if they abused their powers to the detriment of the consumers within their own states? This insures equal protection to the consumers outside the borders of those states. Finally, the federal government, through its power to control imports, has power to prevent price abuses of conservation practices."

Now I am not going to read any more because I would like the Commission to read this. He develops the thesis that conservation is absolute price control, that insures price control. He feels it may be abused and the result is that it needs co-operation between

government and the industry to see that the prices do not go too high. So that that is another argument against pro-ration, if we take the Alberta situation into consideration.

"Any problem of any one division of the industry cannot be finally and equitably dealt with by that division alone as questions of policy affecting any one division, in the final analysis affect all the other divisions, and when taken up by such a board as proposed here, would after being reviewed by the division affected, be presented to the whole board, representing all the divisions of the industry and with the chairman representing the Government and the public, any policy decided on would in all likelihood be workable and equitable to all concerned."

Now I am only dealing with broad questions of policy and not how to run a pump.

"The government for its part would have each department concerned, Lands and Mines, Board of Public Utilities, Provincial Secretary, Trade and Industry and the Attorney General's Department each appoint one man selected for his knowledge of the industry as it concerns the department he represents, at the start, and to train Alberta men you may have to bring in men from the United States and the East who are technically trained and have worked in the particular branch of the business that each department is primarily concerned with, but they

"must have a working knowledge of the whole industry so that they can represent their department either in dealings with the Conservation Board or with other Government departments or industrial interests."

It occurs to me at this point I should state the reason I wrote that is Mr. Manning assured me that his department was going to have something to say, that is the government or the department, in having something to say about the oil business. I had not been able to sell them on the idea of staying out from regulating the oil business so I naturally spent my time and composed this brief and it was with a view that if we could not get the government to keep out of the economics of the situation at least we wanted to soften the shock by having a connecting link of properly trained men in each department of the government with which we were called upon to deal.

MR. COMMISSIONER LIPSETT: Was that distinct from the other Board that you were suggesting, that the producing division and the refining division and the transportation division.....

MR. PLOTKINS: What other board?

MR. COMMISSIONER LIPSETT: You were suggesting another body?

MR. PLOTKINS: A little while ago. That is since then because I found better machinery in the government than even this to deal with our industrial situation. This is the connecting link between the government legislation in matters of taxation, because after all my experience with the government is they are not concerned

about economics. On the average it is revenue they are looking for.

THE CHAIRMAN: Well do you think the time has come in the world when governments must concern themselves with matters of economy?

MR. PLOTKINS: Yes, they have to for this reason that the rate of taxation has now reached such heights that they have got to weigh public ability to pay it, and that is why I am proposing in here that they at least inform themselves as to our ability to pay and our ability to carry out their instructions. If taxes were reasonably low governments should not concern themselves with economic matters. But when they get to be 25 or 30% of the income and business is so balanced that another 5% increase in taxes might dislocate everything, then it is the concern of governments, for their own protection and to prevent economic disruption to inform themselves fully as to the situation before they impose any new taxes. I am not saying it in a cynical way that the government is only concerned with revenue, because after all that is all they are concerned in primarily is to get revenue to run the government, to administer the government. But because of the scale of the operations of government nowadays, they have had to go into every phase of industry and economics in order to ferret out new sources of revenue and everything is weighed in that one light, how much additional revenue can we get out of it.

MRL COMMISSION R LIPSETT: Is that quite correct or an exhaustive statement? Are they not concerned primarily with giving efficient government in all its branches and secondly, and necessarily with raising finances

to do that. They do not exist for the purpose of getting finances. They exist for the purpose of giving good government and they have got to get finances to do that. But that is the secondary objective.

MR. PLOTKINS: That is right, but in the process of giving good government because of the public clamor for more and more services and more and more paternalism, the government is forced to find more sources of revenue and they get to the point where they have to look for more and more ways of getting revenue. I am not imputing they are just looking for money. I realize they have to give just as good government as they can.

THE CHAIRMAN: You say the idea you are now expressing was supplanted in your own mind and covered by a later letter?

MR. PLOTKINS: Yes.

THE CHAIRMAN: What is the date of the later letter so I may have the two associated?

MR. PLOTKINS: It is really not supplanting it. It is in addition to this because this is for the purpose of each department finding out what is going on in the oil business.

THE CHAIRMAN: Well varying it then?

MR. PLOTKINS: And the other is to take care of these trade practices that seemed to loom so large?

THE CHAIRMAN: What are the two letters, just the dates?

MR. PLOTKINS: March 28th, 1939, a letter addressed to Mr. W. D. King, Deputy Minister of Trade and Industry.

THE CHAIRMAN: And this one is?

MR. PLOTKINS: January 10th, 1938.

THE CHAIRMAN: As I understand you, you say these two letters should be read together?

MR. PLOTKINS: Yes.

THE CHAIRMAN: And insofar as they are contradictory one of the other, then the later one is to be accepted as your present view?

MR. PLOTKINS: Insofar as the production end of it is concerned. I have expressed opinions on production now that are at variance with those expressed in this letter.

THE CHAIRMAN: Yes.

MR. PLOTKINS: "As there will be many problems to settle, regarding regulation of production, pipeline and Railroad rates, marketing policies and methods of taxation in all the complexity of the multitude of interests concerned and to protect the residents of the province against monopoly and exploitation by the major companies I feel that some definite planning should be done by the Alberta Government to promote the orderly development of Alberta oil and gas resources and no time should be lost to create the necessary machinery and to enlist all the assistance possible in this work."

You notice I say for the development of Alberta oil and gas resources, because I express in this letter that over half the profits of the industry are derived from production and pipe line, and I also express the axiom that whoever controls oil and pipe line controls the business. Because that is true of this country, and it is true all over the world. I was reading during the noon recess one of the pamphlets

here by some authority and I notice that the refining capacity and the crude capacity owned by the different interests are pretty well in balance. So that the general theory that I work on is that the average major company controls, owns outright or controls just about the amount of crude that it consumes. It is true in general. It may on paper show that they only do this and only do that, but when you take the industry as a whole, and after all this Commission has learned that the industry works on averages, and net backs, and the effect of the local situation does not in consequence reflect materially in the whole situation, so that the maxim must be accepted that the major units of the oil industry see to it that they own all the crude that they need, whether directly or indirectly; whether through their subsidiaries or somebody else's subsidiaries that they are associated with; or control it in some shape or manner. Why? Because that is the way industry works and it is the only way it can control its own business. So why I was expressing the opinion there was for the government to set leasing regulations; whether it is wise and desirable to throw out a lot of lands to be developed; whether the present method of allowing companies to develop it is in the best public interest and so forth. Now during the course of this Inquiry, I had one or two operators, two operators, complain to me that the system of recording of titles of oil lands was defective. The result of the present system was to throw clouds on the title and to permit large organizations to more or less block small operators. Well now, I do not know whether that is true or not. But I assume that if there is no study made of the situation and if it is more or less haphazard in its

L. I. Hudson.

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growth that the ones that would benefit most from such a situation would be the bigger organizations. And that is what I had in mind. In other words, while I do not believe in planned economy from the standpoint of industry, being imposed by the government, I do believe in the government's planning in the public interest, in respect especially to public lands and public minerals. Because as I say it depends on the manner in which these minerals are available to the industry what the result will be on the public. And the result is there should be a study made by the authorities, because it will have a serious effect in the years to come as to whether we retain as Canadians these industries and these resources or whether they are owned somewhere else.

"If a start in creating the necessary administrative machine is made now two or three years should see Alberta with a model oil administration, that will react to the public benefit as it is my opinion that if the present known oil resources are wisely administered and conserved for the use and benefit of Alberta citizens that the industry will enormously increase the wealth and well-being of Alberta."

Respectfully submitted,

L. L. Plotkins. "

"P.S. I wish to point out that where in this memorandum I appear to critize the actions of the Government or the major companies, I must admit that they acted only as other normal humans could act,

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"human nature being what it is and the actions are only brought out to clearly state the facts as I see them."

Now that was as a result, as I say, of an interview with, or several interviews with the Minister of Trade and Industry, and because of the continuous shock between one department or another of the Government with our Company. At one time it would be this thing and the next time it would be something else. There seemed to be no planned, no co-ordinated effort to get someone up in Edmonton to understand our problems and to deal with those sympathetically in the light of the knowledge. So the result was I took the trouble to see Mr.Manning and to tell him what our grievances were, and he said "Now let me know about it in writing" and that was the result.

Now as a result of other shocks and other trouble with the department, because of their endeavour to impose regulations or rules that were disruptive of our operations and our ability to compete, I made a further study and this time met with the other companies. I met with the managers of all the operating companies in Alberta, and after digesting the various problems and taking a little time to go into it, I entered into the following correspondence and made the following suggestions with the results that will be seen.

" " March 28th, 1939.

Mr. W. D. King,
Deputy Minister of Trade & Industry,
EDMONTON, Alberta.

Dear Sir:

Further to my conversation with you and the

L. L. Plotkins;

"Honourable E. C. Manning, I have given the matter referred to in our letter of March 13th further time and consideration and I have interviewed Mr. Stevens of Imperial Oil Limited; Mr. Meltabarger of the Texas Company of Canada Limited; Mr. Boyd of the British American Oil Company; Mr. Jones, Gas & Oil Products Limited; and Mr. McKenzie of the Great West Distributors; as well as advising Mr. McMahon through his local manager, and I find that those seven men are willing to act on the proposed oil industry board."

Now I did discuss that with Mr. King and Mr. Manning at the joint meeting and they had agreed on the principle and they asked me to go out and see if I could get the consent of the men to act on this board so that they would take it into consideration.

" My suggestion is that from these seven Mr. Stevens, Mr. Meltabarger, Mr. Jones, Mr. MacKenzie and myself constitute a board of five to draw up a schedule of business practices on the preliminary organization we have in mind. These five would represent a balanced cross section of both the independent and the major company interests and are acceptable to the other companies.

If any further legislation is required to carry out the proposal we have under consideration, I suggest that this be enacted now that the House is in session."

The reason I said that Mr. Manning expressed the opinion that he did not think they could carry on under the present legislation of the Board of Industrial Relations, it would have to be amended to take care of it.

" It is my intention to be in Edmonton within the next two or three days and I will then go into further details in this matter."

Self Control for the Alberta
Oil Industry.

" Under government supervision and statutory regulations, it is proposed to permit the Alberta oil marketing industry to nominate a committee of five members acceptable to the Department of Trade and Commerce who will undertake the duty of formulating a schedule of fair trade practices covering the distribution in tank cars, tank trucks, drums and at retail of petroleum products in the Province of Alberta."

This does not mean that I agree to this, but the situation was such that the government insisted they were going to carry out the present regulations and if they were going to do that then I wanted it done in what I felt was the best manner possible to reduce the shock, because I do not believe in this. The only thing I have done is assisted the government in making some workable solution.

" Such schedule is to have for its purposes the enactments

1. The creation of standards of quality, etc., of a set of trade and business practices conducive to giving the consuming public quality products and services at fair and equitable prices that will effectively increase purchasing power both to the consumer and to the individuals and

" companies engaged in oil production, refining, and the distribution either as owners or employees.

The schedule should at the beginning cover only such practices as the industry can generally agree on leaving for further study and later application the more controversial and complicated practices now being indulged in on which there is general agreement as to the desirability of eliminating them, but on which means and methods are not now possible of agreement.

Having written such a schedule, this would be referred to the Minister of Trade and Commerce for preliminary approval and then submitted to a general meeting of licensed distributors and dealers and the whole industry for review and approval, such schedule to be reviewed clause by clause altered or added to by a two-thirds vote of the qualified members present. The final schedule when approved by the trade would be referred back for final approval to the Minister of Trade and Commerce for registration and enactment.

On petition of ten or more licensed wholesalers or retailers, as the case may be, or by vote of a majority of the schedule committee. Any section of the schedule of practices could be reviewed, altered, or eliminated; or new

L. L. Plotkins.

"sections added and such changes or additions would be handled in the same manner as the original schedule was reviewed and approved.

It is suggested that as the Department has in successful operation administrative machinery under the Industrial Standards Act, that their experience be utilized to adapt their methods in creating the proper administrative machinery to govern the proposed administration of trade practices to govern the distribution of petroleum products in Alberta.

It is suggested that this board be composed of five members, two representing the major distributing companies, two the independent distributors, and the four choose a chairman.

The secretary of the board to be an official or inspector of the department of Trade and Industry, who will be custodian of the record of proceedings and will act as liaison between the minister and the board.

The first board to be from a slate nominated by the Department of Trade and Industry and two members retired annually and new ones elected.

The board being composed of competent experienced marketers of petroleum products will be at the disposal of the Department of Trade and Industry as an advisory committee and for the study of any problems of mutual concern to the government and

. . . . Hoffman.

"sections added and such changes or additions would be handled in the same manner as the original schedule was reviewed and approved.

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L. L. Plotkins.

"the industry.

As the code of practices it is proposed to enact and make legal and will have been volunatarily accepted by a majority of the industry, and as infractions will be reviewed by a board of experienced tradesmen under statutory conditions, its enforcement should not present any difficulties.

Prosecutions, if necessary, would be made by the secretary of the board on the recommendation of a majority of the board after approval of the Minister of Trade and Industry."

In other words, not start and prosecute everybody for the least little infraction, but exhaust every other means to conciliate or change the situation.

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"Suggested Rules: The creation of standards of
"quality and the prevention of substitution.
"Posting of actual prices and conditions of
"sale, minimum prices, cost of products at
"point of delivery plus actual cost of overhead
"plus a minimum profit of 5%."

That is to stop some of these conditions but I do not think that is legal but still they want that at the present time. It is the law of the land that you cannot sell anything unless you get a profit. Well who is going to determine that? We have no machinery except the biased opinion of whoever might be investigating. If he knows enough about it he might express an opinion. If he does not, well he just comes to some false conclusion but nevertheless he comes to some conclusion.

"Conditions of sale:
"Price Structures.
"The Code should aim to a minimum of regulation
"and cover principles only, permit a fair return
"on the investment as well as decent wages to
"employees; should state what is unfair trade
"practice below cost selling. Act as a clearing
"house for complaintsof infraction.
"realignment of differentials based on Calgary
"shipments by rail or truck."

That has since been done, because the railway rates, they came down and that has taken care of itself and here is another case where a

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disagreement, a maladjustment, lasted for three years. The railway was not ready to make the adjustment, and the companies did not feel like taking it out of their pocket, so they had to wait until the railway got good and ready. Well it came. It took three years but it did not disrupt anything. Otherwise it would have disrupted the industry because any Government attempting to change something suddenly, passes it right down to the last man on the street, right through.

"Pump equipment loans or sale".

I am interjecting all the items that we agreed on, and there are quite a few of them.

Now it shows that there are quite a lot of questions to deal with and if we are going to try and straighten out all these practices which we complain of, it is going to require at least five men all their time and I do not know if they could do it, so all they can do is to bring the men together, suggest remedies and the only way that remedies can be suggested is to first find out the facts, that is to find out how many pumps are being loaned, what it is costing, how much rebate is being given, what does it cost. Now that can all be done by the Government getting statistics from the companies. We have a good basis of it now. We have had a good job of it done and if we continue to submit the same information to the Alberta Government and that is tabulated and coded and made available to us so that we know on an average what is obtained for crude, what it is costing us on an average to refine, what it costs us to distribute, what are the wasteful practices and what all

these costs are, the managers and executives of each company will, of their own volition, without any compulsion, adopt the method which will tend to eliminate them and they will go just as far and will accomplish just as much and as quickly as any Board that you could name, because this Board could not do it over-night. It is going to have to take time. It is going to have to sell the idea; and they will have a dickens of a time because there is no information available and if we have the information just the same, as for instance, just a few days ago as a result of six months' work and as a result of some statistics I was able to obtain from the Canadian National Railways, its economic department, I discovered in the figures which I am now tabulating that our trucks are costing us considerably more than I figured. We did not have the figures, but now that I know that certain phases of the operation are too costly in relation to somebody else's, I am going to apply some remedy but until I got the information,-I might have an idea I couldn't do anything about it and another thing I couldn't even sell my men on the desirability of obtaining it, but once I had the information and I showed it to them they could not but accept the situation and say "Well Yes I see it, we are going to have to do that", but before they just said "Why that is some of his own ideas, he is trying to cut wages", or "He is trying to do this", or "trying to do that". As long as I am thinking the other fellow is giving away his shirt, I am going to try and duplicate it but if I have reliable information that I know on the

average he is not,-and it is the average which counts, the individual situation I will meet,-then I am going to restrain our salesmen from coming along and telling me that the Imperial is prepared to do that and we have to do this in order to get the business and it will take care of itself just the same as today I refuse to accept the statements of my salesmen as to what some other company is doing. I say "Here is our situation, here is as far as we will go because that is all we have to work on and if you cannot sell on that basis, don't sell", because that is not the way that the average major company does, they do have limits, they do have limits, but they do go as far as they can to convince their head office it is necessary to go and they always have the added weapon, especially in the case of the Imperial, where if they are losing position, the executive is more inclined to yield more and more concessions to retain the position but again the Imperial is no worse and no better than anybody else and if the information is available to them, and although they are better situated to get information, still they do not always have reliable information. Then I think a lot of these trade practices which we are complaining of and which are not desirable will not be entirely eliminated but they will be minimized to the point where they will not have any effect on the business as a whole and that is all we are asking. As a matter of fact we are not going to eliminate every maladjustment. We are not going to eliminate all these because it is a question of the viewpoint with some individuals. I may consider it unfair and another man may think it is quite the fair thing to do. Now so long as it

does not disrupt to any extent the business, we have to suffer for it, we have to suffer with it, because it is the least evil.

Now then as a result of this correspondence Mr. King wrote me on April 17th, 1937:

"Dear Mr. Plotkins:

" It has been suggested '

This is a copy apparently of a letter that he sent to all the companies,'

" It has been suggested by "one of the oil operators in the Province, that it "would be desirable to have a committee established, "representative of the different groups interested "in fuel oil distribution in Alberta. The proposed "function of this committee would be to assist the "department in reviewing present fuel oil regulations, "to recommend such others as might be found desir- "able and thereafter to act as an advisory and "regulatory body to promote proper observance of "established regulations by all concerned.

" It would be appreciated if "you would be good enough to advise the views of "your organization on this proposal and, if approved, "as to whether or not you would be prepared to act "on such a committee. Other suggestions will, of "course, be welcome as the department is most de- "sirous of establishing proper distribution practices "in Alberta and will be glad to have your co-operation "herein.

" In addition to yourself,
"the gentlemen noted hereunder have been suggested
"as those from among whom the proposed committee
"might be chosen. We have written to each a letter
"similar to this.

" Your early attention will
"be appreciated.

" Yours faithfully,

" W.D.King,

" Deputy Minister of Trade and Industries. "

With copies to Mr. S. R. Stevens, Imperial Oil Limited; Mr. C. D. Meltabarger, Texas Company, Limited; Mr. G. A. MacKenzie, Great West Distributors, Limited; Mr. L. I. W. Boyd, British American Oil Company; Mr. W. H. Jones, Gas and Oil Products, Limited, and Mr. Mart McMahon, Artic Oil Sales, Limited.

Now the Minister and the Deputy Minister in principle have accepted these views and the only reason that it has not been proceeded with, I believe, is that this commission was sitting and after a final review apparently they decided maybe it was better to wait,-which is probably wise,-but the fact was that we were doing something, not because I was doing this work, not because I believed in it, but because of the prosecution and the influence that our method of doing business, and I figured that as a remedy, I suggested as a remedy a better way of handling these regulations.

Now I have a remark here I want to comment on, I say here my opinion is that eventually

pro-ration will be outlawed. The aim of the Anti-combinations Act as well as the Sherman Act in the United States is to prevent the situations arising which result in price fixing because that is the only way that it affects the public interests; anything which is done is expressed in price and pro-ration, as you will read, the best brains of the industry have concluded, is the ideal method of setting the price on crude and thereby setting the price of the finished products.

Now when the Government recognizes that, the Government of Canada or the Government of the United States and I think they are beginning to see it, although in the United States international considerations are affecting that situation,-it may not here, although we will suffer in dollars and cents,-but when it is recognized here that that is the effect of that legislation or that philosophy, then it will be outlawed the same as any other situation that affects prices, if permitted to exist. I mean it is unlawful for two or three or any body of men or any organizations to get together and start to raise prises or set conditions of sale, why, because then we can just steal from the public.

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[illegible], although in the United States international [illegible]
[illegible] are affected [illegible] publication, it [illegible] not [illegible],
although we will notice it [illegible] and [illegible], but when it
[illegible] recognized here that that is the effect of that [illegible]
[illegible] publication, then it will be outlawed the
same as any [illegible] publication that affects prices, it
[illegible] be [illegible]. I mean it is [illegible] for two or three
[illegible] any body of [illegible] to get together
[illegible] to [illegible] conditions [illegible], why,
[illegible] the [illegible] the public.

[illegible] follows)

In other words, you are taking something you are not entitled to and when you take into consideration and if the effect of it is to actually fix prices then it is unlawful, even if it has not been recognized as such as yet.

THE CHAIRMAN: Well, it would be interesting to have that explored. I think we will rise.

MR. PLOTKINS: I am through, if you will permit me a few minutes more.

THE CHAIRMAN: Very good. But before you leave that, Mr. Plotkins, will you just elaborate that and show us how you reason that pro-ration, as we have it in Alberta, is price fixing?

MR. PLOTKINS: I would have to take that pamphlet that I handed to you and read out the comment on it, because I think that Mr. Byles makes out the case pretty plain. You can ferret it out for yourself.

THE CHAIRMAN: You said before he expresses that theory in here and you adopt his views.

MR. PLOTKINS: I adopt his view although I am in disagreement with him on some points. He advocates pro-ration. Mr. Byles is an advocate of pro-ration.

THE CHAIRMAN: You adopt his views insofar as they serve to show that pro-ration is tantamount to price fixing?

MR. PLOTKINS: Yes. I do not adopt his views as to the practice of pro-ration. He happens to be a man who believes in pro-ration and also is honest enough to say what it means.

MR. COMMISSIONER LIPSETT: That is pro-ration to market as distinct from conservation then?

MR. PLOTKINS: Yes, because I only want to say

this and I am through as far as conservation is concerned, that we all want to figure out a scheme of making more money with the least effort. Pro-ration is the ideal method of limiting production to actual demand and if it is in the hands of the strong companies they can create a condition that will effectively give them the power to set the price. It is true we are in competition within competitive limits but when they are all agreed on the principle they can also agree as to the value of crude and as to the amount of money that can be derived from the public that wants to buy it.

Now, I want to turn over to the Commission a number of articles that expound some of these views in detail, that deal with some of these principles, and especially an article in the "Saturday Evening Post" - probably the only one I should burden the Commission with. It is called "The American Revolution, 1939", by Rose Wilder Lane. There is a quarter page of it that is relevant. The rest of it is just the background to make those portions that I would like the Commission to read intelligible. But they do cover the situation thoroughly and this writer expresses the opinion in one santence here, or in one paragraph, that is the sum and substance of argument. "He observes that in its brief time the American society, independently of government, has destroyed innumerable monopolies, whereas those monopolies taken over by government are preserved in restraint of progress. He knows that government protects every monopoly in American today, and that nothing but governmental protection keeps a free society from destroying any monopoly that ceases to serve a good social purpose."

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That expresses pretty well what I have to say about Government legislation, because it is a fact that privilege can only exist through Government legislation or Government assistance, and there is no privilege if everybody is able to have the opportunity to go and do what he wants to do in relation one to the other. So that if we find the condition where somebody has got something the other fellow cannot get there must be some reason for it and that reason usually is because that particular part of the industry has found ways and means of getting privileges, whether it is expressed through this legislation or that legislation or whether it is expressed by general conditions that the Government has created, it nevertheless results in giving them privileges that are not available to the average man, with the result that they tend towards monopoly and the only way to prevent monopoly is to see that the conditions do not exist. And that is all I ask for in closing. I am asking - I am not complaining, I want to repeat as to the treatment that other companies have given me. I did make a lot of fuss about what they are doing. Why? Not because I object but because I wanted to show that they are the result of legislation, in my opinion, and that I was denied the opportunities that they enjoyed, and in the final analysis all I am asking the Commission to consider is that if what I say is true that we are, the individual in Alberta, and the small company in Alberta is at a disadvantage because of the law Not becuase they have more capital or more brains. I expect no protection on that and I am not asking for it. But because of the law or because of the situations that have been created by the law then I ask them

to recommend that such laws or such situations be eliminated. That is all I have to ask and I thank you for the attention and the courtesy you have shown me in letting me express my case.

MR. HARVIE: I have a statement in reply to the question of the Chairman with respect to the interest of my company in Service Station Equipment Company.

MR. FRAWLEY: I was going to speak about that but I will be glad to hear you first.

MR. HARVIE: I just wish to make the statement that British American Oil Company Limited is not in any way interested to any extent, directly or indirectly, in any Service Station Equipment Company.

MR. FRAWLEY: I was going to question that, while Mr. Plotkins is still here. Before asking my friend Mr. Harvie or Mr. Nolan - I intend to ask them to obtain by wire from the East the information - and I want to be clear as to how far I am to go in asking this information. I can ask whether their companies are directly or indirectly, either through their parent company or through themselves, interested in any company engaged in the manufacture or sale of service station equipment, pumps or otherwise, and stop there. Or should I find out if the oil companies, which I understood was the gist of Mr. Plotkins' complaint this morning, that the oil companies are engaged in the sale of service station equipment on long terms - I think 5-year terms - whereas the equipment companies themselves offer no such terms at all but probably offer the ordinary business-like terms of 60 days or 90 days to him. That is what concerns me. Then I would like, if it is not too wide of the mark, to know whether Mr. Plotkins advocates or does not

[illegible]

[illegible] that are [illegible] or such situations [illegible] eliminated. That is [illegible] I think you for the attention and time [illegible] have shown me in letting me express my [illegible]

[illegible] statement in reply to [illegible] respect to the interest [illegible] Association Government Company. [illegible] I was going to ask about the [illegible] glad to hear you first.

[illegible] I just wish to make the statement that British American Oil Company Limited is not in any way interested to any extent, directly or indirectly, in any Service Station Equipment Company.

[illegible] I was going to present this [illegible] before asking [illegible] I want to ask them [illegible] and I want to [illegible] this information [illegible] directly or indirect[illegible] or through [illegible] the [illegible] of service station equipment, [illegible] or [illegible] this type. [illegible] of the [illegible] which [illegible] good was the [illegible] clothing [illegible] the [illegible] the old [illegible] equipment [illegible] I think [illegible] the equipment [illegible] themselves [illegible] from [illegible] at all but [illegible] after the ordinary business [illegible] today [illegible] Then I [illegible] to [illegible] me. [illegible] when they [illegible] or [illegible]

advocate the business of the oil companies engaging in the sale of service station equipment on long terms; or if he would like to have that abolished or not. I am not clear about the effect of this service station thing and before I ask my friends for any information I would like to be quite clear about it.

MR. PLOTKINS: In the first place, I want to make a remark in reply to Mr. Harvie. It just happens that in 1926 I was in Toronto and worked for the National Meter Company of New York in perfecting a certain patent in respect to meters for distributing gasoline. At that time I was introduced to Mr. King, who was then Manager, and I understand is still Manager of Service Station Equipment Company, and they were considering manufacturing meter pumps. In those days the Department of Weights and Measures in Ottawa objected to meters and it was a question of selling them. So anyway, as a result of my work down there, we finally succeeded in showing the Department of Weights and Measures that it was possible to construct a meter that would measure the oil. In the course of my sojourn in Toronto and subsequently in the course of my investigations and in the course of conversations with officials, I was told that Mr. Ellsworth, the President of the British American Company, had the controlling interest - personally possibly, I do not know - I am not saying, and I mean I was not in a position to say the British American as a company, but Mr. Ellsworth, the President of British American, and I understood and I am still of that opinion because I have had that given to me very lately, that Mr. Ellsworth holds the controlling interest, directly or

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indirectly, in Service Station Equipment Company. Now, there are two Service Station Equipment companies. I understand the original one was started in 1922 or 1923. It was very small, when I was in Toronto in 1926 it was still a comparatively small concern. Since then it has grown into big proportions. But I know that I was told and I believe that Mr. Ellsworth was and is the President and controls the company, through his associates or directly. Now, the question whether they control the company directly or indirectly, or at all, is only relative. I do know that as a matter of fact the principle, as a matter of good business, no company that attains any size, will very long endure paying tribute to another company for its vital necessity. And equipment in the past and to-day yet is a vital necessity to the whole industry. So that we have not only the Service Station Equipment Company but there is the John Woods Company and the Toronto Iron Works Company and their related companies, that the British American ultimately in its own business needs, and they either control directly or indirectly so as to get the cost of these items of equipment down to a reasonable figure, and participate in the profits. Now, that is my information. I think it is easy to be ascertained. Now, the next question is whether this is sold on 5-year terms or whether it is sold on 2-year terms. I did not complain this morning. All I done was to state the facts and to show what the situation is and I did remark and still want the Commission to understand that I felt that up till now, and probably not to as great an extent to-day, but surely in the past there was an incentive in opening up new service stations and selling pumps, apart

from the incentive to sell gasoline. That is all. It still is to-day. If I have a situation where I can make an extra fifteen or twenty thousand dollars, which would be a big sum to me in relation to my operations, on the side in an equipment company, I am not certainly going to pass up the chance to do it.

MR. FRAWLEY: It is a shame to extend this discussion, but I understand the first point, and that is to ascertain the relationship, if any, between the oil companies and the equipment companies. But I was interested in your statement this morning that a dealer cannot, in the ordinary nature of things, unless he is possessed of independent means, he cannot purchase his equipment from the ordinary station equipment company but that he can very readily, and it is made easy for him to purchase it from the oil company. Of course, as a consideration he buys that company's gasoline, which has the effect, to some extent, of freezing competition. I thought that was your concern because you could not get the gallonage from these pumps unless you had funds equal to the funds expended in that way by the major companies. I only want to know these things, first for the Commission and so that I may be able to comment intelligently, if I am asked to comment on them, when I am talking to the Commission. That is why I want to be clear on what it means, this service station relationship.

MR. PLOTKINS: It is true that the average individual wanting to buy a pump only once in a thousand times would go direct to the pump company. In the first place the pump company makes no effort, the equipment company makes no effort, to deal with the consumer. It makes every effort to deal with the company. Its terms are known. Now I am not concerned whether the Imperial or the British American sells pumps on time. I have the same privilege. It is true it ties up business to them when they do it but it does to me when I do that so there is no complaint on my part of that practice.

MR. FRAWLEY: Do you really want that to continue?

MR. PLOTKINS: No, I do not want that to continue because I do not believe in investing money if I can get out of it but that is there and as long as I have the same privilege I can destroy it if I wish and I will explain what I mean when I say "I can destroy it"; the drum situation for the last 15 or 20 years has bothered me. I have felt that it was unfair. Well, what did I do about it? Ten years ago I made up my mind I was not going to buy another drum. I was going to force the companies I knew it would take 10 years, but I was going to force the companies to discontinue the loaning of drums and I know one of these days they are going to definitely decide to quit, - why, - because I have been using their drums at their expense and I have created a condition where they are going to quit very quick.

MR. FRAWLEY: Let me see if I am getting the Commission's directions, Mr. Plotkins. You did direct me this morning to obtain from the major companies a statement with respect to the interest of their companies, respective

[illegible] true that the average [illegible] to buy a pump only once in a thousand [illegible] direct t [illegible] the pump company. In the first pla[illegible] effort, the equipment company make[illegible] the consumer. It makes every eff[illegible] the company. Its terms are known. Now I am [illegible] whether the Imperial or the British Ameri[illegible] time. I have the same privileges. It is tru[illegible] to them when they do it but it is a [illegible] there is no complaint on my part [illegible]

Do you really want that [illegible]

No, I do not want that [illegible] because I do not believe in investing money if I can get it [illegible] is there and as long as I have the same [illegible] destroy it if I wish or I will explain wh[illegible] say "I can destroy it", the same situation [illegible] 20 years has bothered me. I have felt that it was [illegible] about it. For years and I made up my mind [illegible] I was going to [illegible] years, but [illegible] the companies to discontinue the practice of drum [illegible] days they are going to definitely [illegible] because I have been [illegible] expense and I have created a condition where they are [illegible] very quick.

Let me [illegible] did it [illegible]

companies, in any service station equipment company and shall I rest at that, shall I obtain that information?

THE CHAIRMAN: I think so. I think the implications are there, they either do or they do not.

MR. FRAWLEY: Will my friend, Mr. Nolan, be so kind as to not insist upon me trying to get a letter to him tonight, in order that he may get his telegram away tonight. You understand precisely what is wanted?

MR. NOLAN: I do not. There was a statement made today that my company was interested in a particular company of which I had never head, the Gilbert and Barker.

MR. PLOTKINS: I am surprised, the Gilbert and Barker Manufacturing Company.

MR. NOLAN: It is not in the evidence in this case, Gilbert and Barker, and do you want me to find out if my Company has directly or indirectly any interest in Gilbert and Barker?

MR. FRAWLEY: Or any other equipment service station company.

MR. NOLAN: Doing business where?

THE CHAIRMAN: Anywhere.

MR. PLOTKINS: I will give that information from the same source that I gave some information some time ago, from the Department of State in Washington, D. C. The Standard Oil Company of New Jersey's list of subsidiaries and I will have to find Gilbert and Barker.

THE CHAIRMAN: We have all the information we want unless the companies want to supply more.

MR. PLOTKINS: I can give you the degree of their control. Here it is here. The Gilbert and Barker Manufacturing Company 100%; the Gilbert and Barker Manuf-

[illegible]

[illegible]

[illegible]

acturing Company Limited 100%, two companies, an American and a Canadian Company. The Gilbert and Barker Manufacturing Company manufactures to my knowledge all types of service station equipment. We buy quite a bit from them.

THE CHAIRMAN: And that which you are reading from?

MR. PLOTKINS: Is a print of all, not all, but all the companies that they would readily allow to give information on, supplied by the Standard Oil of New Jersey to the American State Department.

MR. FRAWLEY: Those are subsidiaries of the Standard Oil of New Jersey?

MR. PLOTKINS: That is right.

MAJOR LIPSETT: And one of them in Canada, of those two manufacturing companies?

MR. PLOTKINS: Yes.

MAJOR LIPSETT: One is a Canadian Company and the other is an American Company?

MR. PLOTKINS: Yes.

MAJOR LIPSETT: Manufacturing in Canada?

MR. PLOTKINS: Yes, they manufacture in Toronto to be exact.

MR. FRAWLEY: Then I mean, I do not want to be, is it understood then that we will get information about that?

MR. NOLAN: Well what information is wanted, sir?

THE CHAIRMAN: Oh, I do not think we want any. We find that the Standard Oil Company of New Jersey, of which your company is a subsidiary, is in the business of supplying equipment to service stations, that which we had

[illegible]

[illegible] Clothing

[illegible] Company Limited 10 [illegible], the [illegible], [illegible] [illegible]
[illegible] Company. [illegible] [illegible] [illegible] [illegible]
Government contractors [illegible] all types of service
[illegible] equipment. [illegible] [illegible] [illegible].

MR. [illegible]: [illegible] [illegible] [illegible] are [illegible]
[illegible].

MR. [illegible]: [illegible] [illegible] [illegible], not [illegible], but
[illegible] the companies that [illegible] [illegible] [illegible] [illegible]
either on, [illegible] by [illegible] [illegible] [illegible] [illegible] the
American [illegible] Government.

MR. [illegible]: [illegible] [illegible]
[illegible] [illegible] [illegible]?

MR. [illegible]: [illegible]

[illegible]: [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]?

MR. [illegible]: Yes.

[illegible]: [illegible] [illegible] [illegible]
the other [illegible] [illegible] [illegible]?

MR. [illegible]: [illegible]

[illegible]: [illegible] [illegible] [illegible] Quebec?

MR. [illegible]: [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible].

MR. [illegible]: [illegible] [illegible], I [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

MR. [illegible]: [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible]?

MR. [illegible]: [illegible] [illegible] [illegible] [illegible] [illegible].
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

not heard of before.

MR. PLOTKINS: There is one matter in which I wish to make a correction there in my argument on Page 8 of this copy which I submitted to the reporters, there is a slight error in a figure and it changes one other figure. The figure which I have reference to is the capital employed, instead of $16,616.00, I have a breakdown of it so that Mr. Cottle can verify it, amounting to $16,270.82 and that will change, that will affect the ratio probably from $17.70 sales to $1.00 to $17.65 more $17.68, so I just wish to point that out so that there will be no misunderstanding.

THE CHAIRMAN: Thank you, Mr. Plotkins. Now Mr. Brownlee will be ready in the morning?

MR. FRAWLEY: Yes, I shall tell him, at 10 o'clock?

THE CHAIRMAN: Mr. Mahaffy, I notice you have been here for a couple of days. I suppose it must be for a special purpose, do you wish to speak to this matter of the pipe line?

MR. MAHAFFY: Well, I would just like to make a statement, Mr. Chairman, in view of the fact that the matter has come up.

THE CHAIRMAN: I do not mear you should do so at this minute but you do wish to address us about that?

MR. MAHAFFY: I would like to, sir.

THE CHAIRMAN: How long will that take?

MR. MAHAFFY: Five or ten minutes.

THE CHAIRMAN: Well Mr. Mahaffy has been here a couple of days and he does not like to stay here unless he has business here so perhaps it might be all right to let Mr. Mahaffy have his five or ten minutes the first thing in

the morning and then the field will be clear for Mr. Brownlee.

MR. FRAWLEY: That is all right.

THE CHAIRMAN: And for Mr. Davies.

MR. FRAWLEY: That is right. I will tell him.

THE CHAIRMAN: In view of the fact that Mr. Plotkins was finished sooner than we expected, I see no reason for sitting any earlier tomorrow morning than usual, so we will adjourn until 10.30 o'clock.

(The Inquiry was here adjourned to be resumed at 10.30 A. M. 14th December, 1939.)